

# CALIFORNIA INSTITUTE OF TECHNOLOGY JET PROPULSION LABORATORY

## GENERAL PROVISIONS: FIXED-PRICE CONSTRUCTION SUBCONTRACT

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#### **GENERAL PROVISIONS CANNOT BE ALTERED WITHOUT NASA APPROVAL**

The following attachments are incorporated into the General Provisions. Submission of an offer and beginning performance constitute certification and recertification per Form JPL 2892.

- Release of Information, Form JPL 1737
- Notification to Prospective Subcontractors of JPL's Ethics Policies and Anti-Kickback Hotline, Form JPL 2385
- Certifications, Form JPL 2892
- Asbestos Notification, Form JPL 2895
- Notice of Potential Tax Withholding

## **AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION**

[T&MC, FPC – 09/04] [FAR 52.222-27 - 02/99]

(The provisions of this Article shall be applicable only if the amount of this Subcontract exceeds \$10,000. Work performed outside the United States by employees recruited outside the United States is exempt from the requirements of this Article.)

(a) Definitions.

- (1) "Covered area," as used in this Article, means the geographical area described in the solicitation for this Subcontract.
- (2) "Director," as used in this Article, means Director, Office of Federal Contract Compliance Programs (OFCCP), United States Department of Labor, or any person to whom the Director delegates authority.
- (3) "Employer identification number," as used in this Article, means the Federal Social Security number used on the employer's quarterly federal tax return, U.S. Treasury Department Form 941.
- (4) "Minority," as used in this Article, means:
  - (A) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification);
  - (B) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);
  - (C) Black (all persons having origins in any of the black African racial groups not of Hispanic origin); and
  - (D) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).
- (b) If the Subcontractor, or a Lower-tier Subcontractor at any tier, Lower-tier Subcontractor a portion of the work involving any construction trade, each such Lower-tier Subcontractor in excess of \$10,000 shall include this Article and the Notice containing the goals for minority and female participation stated in the solicitation for this Subcontract.
- (c) If the Subcontractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Subcontractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each Subcontractor or Lower-tier Subcontractor participating in an approved plan is also required to comply with its obligations under the "Equal Opportunity" Article, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other Subcontractors or Lower-tier Subcontractor toward a goal in an approved plan does not excuse any Subcontractor's or Lower-tier Subcontractor's failure to make good-faith efforts to achieve the plan's goals.
- (d) The Subcontractor shall implement the affirmative action procedures in subparagraphs (g)(1) through (16) of this Article. The goals stated in the solicitation for this Subcontract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Subcontractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Subcontractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Subcontractor is expected to make substantially uniform progress toward its goals in each craft.
- (e) Neither the terms nor conditions of any collective bargaining agreement, nor the failure by a union with which the Subcontractor has a collective bargaining agreement, to refer minorities or women shall excuse the Subcontractor's obligations under this Article, Executive Order 11246, as amended, or the regulations there under.
- (f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Subcontractor during the training period, and the Subcontractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

- (g) The Subcontractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the Subcontractor's compliance with this Article shall be based upon its effort to achieve maximum results from its actions. The Subcontractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:
- (1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Subcontractor's employees are assigned to work. The Subcontractor, if possible, will assign two or more women to each construction project. The Subcontractor shall ensure that foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Subcontractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.
  - (2) Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the Subcontractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
  - (3) Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off- the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the Subcontractor by the union or, if referred back, not employed by the Subcontractor, this shall be documented in the file, along with whatever additional actions the Subcontractor may have taken.
  - (4) Immediately notify the Director when the union or unions with which the Subcontractor has a collective bargaining agreement has not referred back to the Subcontractor a minority or woman sent by the Subcontractor, or when the Subcontractor has other information that the union referral process has impeded the Subcontractor's efforts to meet its obligations.
  - (5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Subcontractor's employment needs, especially those programs funded or approved by the Department of Labor. The Subcontractor shall provide notice of these programs to the sources compiled under subparagraph (g)(2) above.
  - (6) Disseminate the Subcontractor's equal employment policy by:
    - (A) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Subcontractor in meeting its Subcontract obligations;
    - (B) Including the policy in any policy manual and in collective bargaining agreements;
    - (C) Publicizing the policy in the company newspaper, annual report, etc.;
    - (D) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and
    - (E) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.
  - (7) Review, at least annually, the Subcontractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all on-site supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
  - (8) Disseminate the Subcontractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other Subcontractors and s Lower-tier Subcontractor with which the Subcontractor does or anticipates doing business.
  - (9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Subcontractor's recruitment area and employment needs. Not later than one month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification

to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

- (10) Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after-school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Subcontractor's workforce.
  - (11) Validate all tests and other selection requirements where required under 41 CFR 60-3.
  - (12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.
  - (13) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Subcontractor's obligations under this Subcontract are being carried out.
  - (14) Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - (15) Maintain a record of solicitations for Lower-tier Subcontractors for minority and female construction Subcontractors and suppliers, including circulation of solicitations to minority and female Subcontractor associations and other business associations.
  - (16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Subcontractor's equal employment policy and affirmative action obligations.
- (h) The Subcontractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in subparagraphs (g)(1) through (16). The efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the Subcontractor is a member and participant may be asserted as fulfilling one or more of its obligations under subparagraphs (g)(1) through (16), provided the Subcontractor:
- (1) Actively participates in the group;
  - (2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;
  - (3) Ensures that concrete benefits of the program are reflected in the Subcontractor's minority and female workforce participation;
  - (4) Makes a good-faith effort to meet its individual goals and timetables; and
  - (5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Subcontractor. The obligation to comply is the Subcontractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Subcontractor's noncompliance.
- (a) A single goal for minorities and a separate single goal for women shall be established. The Subcontractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Subcontractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.
- (b) The Subcontractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
- (c) The Subcontractor shall not enter into any Lower-tier Subcontractor with any person or firm debarred from Government Subcontracts under Executive Order 11246, as amended.
- (d) The Subcontractor shall carry out such sanctions and penalties for violation of this Article and of the "Equal Opportunity" Article, including suspension, termination, and cancellation of existing Lower-tier Subcontractors, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this Article and Executive Order 11246, as amended.
- (e) The Subcontractor in fulfilling its obligations under this Article shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (g) above, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Subcontractor fails to comply with the requirements of Executive

Order 11246, as amended, the implementing regulations, or this Article, the Director shall take action as prescribed in 41 CFR 60-4.8.

- (f) The Subcontractor shall designate a responsible official to:
  - (1) Monitor all employment-related activity to ensure that the Subcontractor's equal employment policy is being carried out;
  - (2) Submit reports as may be required by the Government; and
  - (3) Keep records that shall at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.
- (g) Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

#### **AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES**

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI, A - E, RSA – 09/04] [FAR 52.222-36 - 06/98]

(This Article applies to Subcontracts that exceed \$10,000, unless the work is performed outside the United States by employees recruited outside the United States.)

Incorporate by reference FAR 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793).

#### **ANTI-KICKBACK PROCEDURES**

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E, RSA – 09/04] [FAR 52.203-7 – 07/95]

- (h) Definitions.
  - (1) "Kickback," as used in this Article, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Subcontractor, prime Subcontractor employee, Lower-tier Subcontractor, or Lower-tier Subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a Lower-tier Subcontract relating to a prime contract.
  - (2) "Person," as used in this Article, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.
  - (3) "Prime contract," as used in this Article, means a Subcontract or subcontract action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.
  - (4) "Prime Contractor," as used in this Article, means a person who has entered into a prime contract with the United States.
  - (5) "Prime Contractor employee," as used in this Article, means any officer, partner, employee, or agent of a prime contractor.
  - (6) " Lower-tier Subcontract," as used in this Article, means a Subcontract or contractual action entered into by a prime Subcontractor or Lower-tier Subcontract for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.
  - (7) " Lower-tier Subcontract," as used in this Article, (i) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a Lower-tier Subcontract entered into in connection with such prime contract, and (ii) includes any person who offers to furnish or furnishes general supplies to the prime contractor or a higher-tier subcontractor.
  - (8) " Lower-tier Subcontract employee," as used in this Article, means any officer, partner, employee, or agent of a Lower-tier Subcontract.
- (i) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from:
  - (1) Providing or attempting to provide or offering to provide any kickback;

- (2) Soliciting, accepting, or attempting to accept any kickback; or
- (3) Including, directly or indirectly, the amount of any kickback in the Subcontract price charged by a prime Contractor to the United States or in the Subcontract price charged by a Lower-tier Subcontract to a prime contractor or higher-tier subcontractor.

(j)

- (1) When the Subcontractor has reasonable grounds to believe that a violation described in paragraph (b) of this Article may have occurred, the Subcontractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.
- (2) The Subcontractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this Article.
- (3) The Institute may (i) offset the amount of the kickback against any monies owed under the Subcontract and/or (ii) direct that the Subcontractor withhold, from sums owed a Lower-tier Subcontract under the Subcontract, the amount of any kickback. JPL may order that monies withheld under subdivision (c)(3)(ii) of this Article be paid over to JPL unless JPL has already offset those monies under subdivision (c)(3)(i) of this Article. In either case, the Subcontractor shall notify JPL when the monies are withheld.
- (4) The Subcontractor agrees to incorporate the substance of this Article, including this subparagraph (c)(4), in all Lower-tier Subcontracts under this Subcontract.

#### APPRENTICES AND TRAINEES

[FPC, T&MC – 09/04] [FAR 52.222-9 - 02/88]

(Work performed outside the United States is exempt from the requirements of this Article.)

- (a) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Subcontractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Subcontractor's or Lower-tier Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (b) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as



a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (c) Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this Article shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR Part 30.

#### **ASBESTOS NOTIFICATION**

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E - 09/04]

(This Article applies if any of the Subcontract effort will be performed in JPL-Pasadena buildings. Work performed outside the United States is exempt from the requirements of this Article.)

Subcontractor acknowledges receipt of the attached "Asbestos Notification," form JPL 2895, identifying JPL buildings containing asbestos and agrees to distribute the Notice to all its personnel prior to their commencing work in such buildings. Subcontractor agrees to coordinate with the JPL Safety Operations Section for special asbestos handling instructions to be given to all Subcontractor's personnel, including Lower-tier Subcontractors' personnel, prior to their commencing work, if any, which could disturb asbestos in JPL-controlled buildings. The substance of this Article will be included in all Lower-tier Subcontracts issued under this Article for work performed in JPL-Pasadena buildings.

#### **ASSIGNMENT, NOVATION AND TRANSFER**

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E CIS, RSA - 09/04] [FAR 52.244-2 - 08/98]

This Subcontract may be assigned, novated, or transferred to a successor-in-interest, a successor Contractor to operate the Jet Propulsion Laboratory, or the Government.

#### **ASSIGNMENT OF RIGHTS AND DELEGATION OF DUTIES**

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E - 09/04] [FAR 52.232-23(a) - 01/86]

- (a) The Subcontractor may assign its rights to be paid amounts due or to become due as a result of the performance of this Subcontract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.
- (b) Any such assignment or reassignment shall be subject to the following conditions:
  - (1) Any assignment or reassignment authorized under this provision shall cover all amounts payable under this Subcontract, and not paid as of (i) the effective date of assignment or (ii) the date JPL receives written notice of the assignment, whichever is later.
  - (2) No assignment may be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this Subcontract.
  - (3) Two copies of the notice of assignment, signed by the Subcontractor, shall be furnished to JPL, Attn: Accounts Payable.
  - (4) If a party other than the Subcontractor provides JPL with a notification that the amount due or to become due under this Subcontract has been assigned and that payment is to be made to the claimed assignee, JPL may withhold any payments which are due and payable under the Subcontract until JPL is furnished with either (i) verification or denial of assignment from the Subcontractor or (ii) reasonable proof that the assignment has been made.



- (5) The Subcontractor shall not furnish or disclose to any assignee under this Subcontract any classified document (which term includes this Subcontract if access to classified material is authorized under this Subcontract) or information pertaining to classified work under this Subcontract unless JPL authorizes such action in writing.
- (6) No assignment may be made which includes, either specifically or by implication, any delegation of the Subcontractor's duty to perform the services or provide the supplies required by this Subcontract unless such assignment and delegation is consented to by JPL in accordance with the provisions of paragraph (c) below.
- (7) The Subcontractor is prohibited, without prior written JPL consent, from delegating any part of the duties required of it by this Subcontract; provided, however, that nothing contained herein shall be deemed to prohibit the Subcontractor from placing purchase orders and Lower-tier Subcontracts, subject, however, to the provision of this Subcontract entitled " Lower-tier Subcontracts." Delegation of duties without such consent is void.

#### **AUDITS AND RECORDS – NEGOTIATION**

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E, RSA – 09/04] [FAR 52.215-2 – 06/9]

(This provision is not applicable for procurements of \$100,000 or less, for commercial items, or for utility services at rates not exceeding those established to apply uniformly to the general public, plus any applicable reasonable connection charge.)

- (a) As used in this Article, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- (b) Examination of Costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable Subcontract, or any combination of these, the Subcontractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this Subcontract. This right of examination shall include inspection at all reasonable times of the Subcontractor's plants, or parts of them, engaged in performing the Subcontract.

If this is a facilities acquisition, the obligations and rights specified in this paragraph shall extend to the use of, and charges for the use of, the facilities under this Subcontract.

- (c) Cost or Pricing Data. If the Subcontractor has been required to submit cost or pricing data in connection with pricing action relating to this Subcontract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Subcontractor's records, including computations and projections, related to:
  - (1) The proposal for the Subcontract, Lower-tier Subcontract, or modification;
  - (2) The discussions conducted on the proposal(s), including those related to negotiating;
  - (3) Pricing of the Subcontract, Lower-tier Subcontract, or modification; or
  - (4) Performance of the Subcontract, Lower-tier Subcontract, or modification.
- (d) Comptroller General.
  - (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Subcontractor's directly pertinent records involving transactions related to this Subcontract or a Lower-tier Subcontract hereunder.
  - (2) This paragraph (d) may not be construed to require the Subcontractor or Lower-tier Subcontractor to create or maintain any record that the Subcontractor or Lower-tier Subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
- (e) Reports. If the Subcontractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (i) the effectiveness of the Subcontractor's policies and procedures to produce data compatible with the objectives of these reports and (ii) the data reported.

- (f) Availability. The Subcontractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this Article, for examination, audit, or reproduction, until three years after final payment under this Subcontract, or for any shorter period specified in Subpart 4.7, Subcontractor Records Retention, of FAR, and any corresponding implementing or supplementing provisions in the NFS, or for any longer period required by statute or by other Articles of this Subcontract. In addition:
- (1) If this Subcontract is completely or partially terminated, the Subcontractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and
  - (2) The Subcontractor shall make available records relating to appeals under the "Disputes" Article or to litigation or the settlement of claims arising under or relating to this Subcontract until such appeals, litigation, or claims are finally resolved.
- (g)
- (1) The Subcontractor shall insert all of the provisions of this Article, including this paragraph (g), in all Lower-tier Subcontracts under this Subcontract that exceed \$100,000, and:
    - (A) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
    - (B) For which cost or pricing data are required; or
    - (C) That requires the Lower-tier Subcontractor to furnish reports as discussed in paragraph (e) of this clause.
  - (2) The Article may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government Prime Contract.
- (h) If this is a cost-reimbursement Subcontract with an educational or other nonprofit institution, the provisions of OMB Circular No. A-133, "Audits of Institutions of Higher Learning and Other Nonprofit Institutions," apply to this Subcontract.

#### **AUTHORITY OF JPL REPRESENTATIVES**

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E, RSA – 09/04]

- (a) No request, notice, authorization, direction or order received by the Subcontractor and issued either pursuant to a provision of this Subcontract, to a provision of any document incorporated in this Subcontract by reference, or otherwise, shall be binding upon either the Subcontractor or the Institute unless issued or ratified in writing by the JPL Subcontracts Manager, the Manager, Acquisition Division, JPL, or by representative(s) designated in writing by either of them. Designations of authorized representatives shall define the scope and limitations of the authorized representatives' authorities.
- (b) The Subcontractor shall immediately notify, in writing, the JPL Subcontracts Manager, or the Manager, Acquisition Division, JPL, whenever a request, notice, authorization, direction, or order has been received from a representative of JPL other than the JPL Subcontracts Manager, or the Manager, Acquisition Division, JPL, which, but for the lack of authorization on the part of the issuing JPL representative, would: (i) effect a change within the meaning of the "Changes" Article; (ii) increase or decrease the Subcontract amount or amount allotted to this Subcontract; or (iii) otherwise be the basis for assertion of a claim by the Subcontractor under any provision of the Subcontract.

#### **AUTHORIZATION AND CONSENT**

[FP-NR&D, FPC, RSA – 09/04] [FAR 52.227-1 – 07/95]

- (a) The Government authorizes and consents to all use and manufacture, in performing this Subcontract or any Lower-tier Subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by JPL under this Subcontract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Subcontractor or a Lower-tier Subcontractor with (i) specifications or written provisions forming a part of this Subcontract or (ii) specific written instructions given by JPL directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this Subcontract or any Lower-tier Subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

- (b) The Subcontractor agrees to include, and require inclusion of, this Article, suitably modified to identify the parties, in all Lower-tier Subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples and design or testing services expected to exceed \$100,000); however, omission of this Article from any Lower-tier Subcontract, under or over \$100,000, does not affect this authorization and consent.

#### **BADGES AND PASSES**

[T&MC, FPC – 09/04]

The Subcontractor is responsible for insuring that its personnel and Lower-tier Subcontractor personnel, performing work under this Subcontract on JPL controlled premises, obtain from the JPL Security Group the required badges and passes, if any, authorizing admittance to the premises.

#### **BANKRUPTCY**

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E – 09/04] [FAR 52.242-13, 07/95]

In the event the Subcontractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Subcontractor agrees to furnish, by certified mail or electronic commerce method authorized by the Subcontract, written notification of the bankruptcy to the JPL Subcontracts Manager responsible for administering the Subcontract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of JPL Subcontract numbers for all JPL Subcontracts against which final payment has not been made. This obligation remains in effect until final payment under this Subcontract.

#### **BONDS**

[FPC – 03/08]

(Work performed outside the United States is exempt from the requirements of this Article. Applies only to Subcontracts expected to exceed \$100,000 in value.)

- (a) Payment Bond. If this Subcontract exceeds \$100,000, the Subcontractor agrees to furnish a payment bond with good and sufficient surety or sureties acceptable to JPL for the protection of persons furnishing material or labor in connection with the performance of the work under this Subcontract on a form acceptable to JPL. The penal sum of such payment bond shall be 100% of the original Subcontract amount, provided, however, that JPL may require an additional amount of bond in connection with work added to this Subcontract by modification.
- (b) Performance Bond. If the Subcontract price exceeds \$100,000, the Subcontractor further agrees to furnish a performance bond with good and sufficient surety or sureties acceptable to JPL in connection with the performance of work under this Subcontract on a form acceptable to JPL. The penal sum of such performance bond shall be 100% of the original Subcontract amount, provided, however, that JPL may require an additional amount of bond in connection with work added to this Subcontract by modification.
- (c) Any bonds required hereunder will be dated as of the same date as the notice of award and will be furnished by the Subcontractor to JPL at the same time the Subcontract is executed. Such bonds shall be in favor of the United States of America and the California Institute of Technology. Corporations executing any of the bonds as sureties must be among those appearing on the Treasury Department's list of approved sureties and must be acting within the limitations as set forth therein.
- (d) If any surety upon any bond furnished in connection with this Subcontract becomes unacceptable to JPL or if any such surety fails to furnish reports as to its financial condition from time to time as requested by JPL, the Subcontractor shall promptly furnish such additional security as may be required from time to time to protect the interest of the Institute and the Government and of persons supplying labor or materials in the performance of the work contemplated by this Subcontract.

#### **BUY AMERICAN ACT - CONSTRUCTION OF MATERIALS UNDER TRADE AGREEMENTS**

[T&MC, FPC – 09/04] [FAR 52.225-11 – 07/02]

(If the Article entitled "Buy American Act-Supplies" exists in this Subcontract, it is deleted and this Article is substituted therefore. Work performed outside the United States is exempt from the requirements of this Article.)

- (a) Definitions.

- (1) "Components," as used in this Article, means an article, material, or supply incorporated directly into a construction material.

- (2) "Construction material," as used in this Article, means an article, material, or supply brought to the construction site by the Subcontractor Lower-tier Subcontractor for incorporation into the building or work. The term also includes an item brought to the site pre-assembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, which are discrete systems incorporated into a public building or work and which are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site.
- (3) "Cost of components" means:
- (i) For components purchased by the Subcontractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
  - (ii) For components manufactured by the Subcontractor, all costs associated with the manufacture of this component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.
- (4) "Designated Country" means any of the following countries:
- |                          |                   |                    |                       |
|--------------------------|-------------------|--------------------|-----------------------|
| Aruba                    | Equatorial Guinea | Kiribati           | Sao Tome and Principe |
| Austria                  | Finland           | Korea, Republic of | Sierra Leone          |
| Bangladesh               | France            | Lesotho            | Singapore             |
| Benin                    | Gambia            | Liechtenstein      | Somalia               |
| Bhutan                   | Germany           | Luxembourg         | Spain                 |
| Botswana                 | Greece            | Malawi             | Sweden                |
| Burkina Faso             | Guinea            | Maldives           | Switzerland           |
| Burundi                  | Guinea -Bissau    | Mali               | Tanzania U.R.         |
| Canada                   | Haiti             | Mozambique         | Togo                  |
| Cape Verde               | Hong Kong         | Nepal              | Tuvalu                |
| Central African Republic | Iceland           | Netherlands        | Uganda                |
| Chad                     | Ireland           | Niger              | United Kingdom        |
| Comoros                  | Israel            | Norway             | Vanuatu               |
| Denmark                  | Italy             | Portugal           | Western Samoa         |
| Djibouti                 | Japan             | Rwanda             | Yemen                 |
- (5) "Designated country construction material," as used in this Article, means a construction material that (i) Is wholly the growth, product, or manufacture of a designated country; or (ii) In the case of a construction material that consists in whole or in part of materials from another country has been substantially transformed in a designated country into a new and different construction material distinct from the materials from which it was transformed.
- (6) "Domestic Construction material," as used in this Article, means (i) an non-manufactured construction material mined or produced in the United States, or (ii) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which non-availability determinations have been made are treated as domestic
- (7) "Foreign construction material" means a construction material other than a domestic construction material.
- (8) " Free Trade Agreement country," as used in this Article, means Canada, Chile, Mexico, or Singapore.
- (9) Free Trade Agreement country construction material," as used in this Article, means a construction material that:

- (A) Is wholly the growth, product, or manufacture of a Free Trade agreement country; or
- (B) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a FTA country into a new and different construction material distinct from the materials from which it was transformed.

(10) United States" means the 50 States and the District of Columbia, and outlying areas.

(b) Construction Materials.

- (1) This clause implements the Buy American Act (41 U.S.C. 10a - 10d) and the Balance of Payments Program by providing a preference for domestic construction material. In addition JPL's Contracting Officer has determined that the Trade Agreements Act and the Free Trade Agreement (FTA) apply to this acquisition. Therefore, the Buy American Act restrictions are waived for designated country and FTA country construction materials.
- (2) The Subcontractor shall use only domestic, designated country, or FTA country construction material in performing this Subcontract, except as provided in paragraphs (b)(3) and (b)(4) of this Article.
- (3) The requirement in paragraph (b)(2) of this Article does not apply to the excepted construction material or components listed as follows:
- (4) (At this time, there are no excepted construction materials or components.)
- (5) Other foreign construction material may be added to the list in paragraph (b) (3) of this clause if the Government through JPL's Contracting Officer determines that:
  - (A) The cost of domestic construction material would be unreasonable (the cost of a particular domestic construction material subject to the restrictions of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent.
  - (B) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or
  - (C) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American Act.

(1)

- (i) Any Subcontractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including:
  - (A) A description of the foreign and domestic construction materials;
  - (B) Unit of measure;
  - (C) Quantity;
  - (D) Price;
  - (E) Time of delivery or availability;
  - (F) Location of the construction project;
  - (G) Name and address of the proposed supplier; and
  - (H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.
- (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.
- (iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).
- (iv) Any Subcontractor request for a determination submitted after Subcontract award shall explain why the Subcontractor could not reasonably foresee the need for such determination and could not have requested the determination before Subcontract award. If the Subcontractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

- (2) If the Government determines after Subcontract award that an exception to the Buy American Act applies and that adequate consideration has been negotiated, the Subcontract will be modified to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(A) of this clause.
- (3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.
- (d) To permit evaluation of requests under paragraph (c) of this Article based on unreasonable cost, the Subcontractor shall include the following information and any applicable supporting data based on the survey of data:

#### FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON

Construction Material Description	Unit of Measure	Quantity	Price (Dollars) <sup>1</sup>
Item 1:			
Foreign Construction Material:			
Domestic Construction Material:			
Item 2:			
Foreign Construction Material:			
Domestic Construction Material:			

- Notes: 1. List all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).
2. Provide name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary. Include other applicable supporting information.
- (e) United States law will apply to resolve any claim of breach of this Subcontract.

#### CERTIFICATION OF ELIGIBILITY

[T&MC, FPC – 09/04] [FAR 52.222-15 – 02/88]

(Work performed outside the United States is exempt from the requirements of this Article.)

- (a) By entering into this Subcontract, the Subcontractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Subcontractor's firm is a person or firm ineligible to be awarded Government Subcontracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (b) No part of this Subcontract shall be Lower-tier Subcontracted to any person or firm ineligible for award of a Government Subcontract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

#### CHANGES – CONSTRUCTION

[FPC – 09/04] [FAR 52.243-4 – 08/87]

- (a) JPL may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a unilateral modification issued under this Article, make changes in the work within the general scope of the Subcontract, including but not limited to changes:
  - (1) In the specifications (including drawings and designs);
  - (2) In the method or manner of performance of the work;
  - (3) In the Government-owned, JPL-furnished facilities, equipment, materials, services, or site; or
  - (4) Directing acceleration in the performance of the work.
- (b) Subject to the provisions of the Article of this Subcontract entitled "Authority of JPL Representatives," any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from JPL that causes a change shall be treated as an order under this Article, provided, that the

Subcontractor gives JPL written notice stating (i) the date, circumstances, and source of the order and (ii) that the Subcontractor regards the order as an order issued hereunder. Notwithstanding the foregoing, no order from JPL in a Technical Direction Memorandum (JPL 2084-S) and accepted thereon by the Subcontractor without exception shall be treated as an order under this Article.

- (c) Except as provided in this Article, no order, statement, or conduct of JPL shall be treated as a change under this Article or entitle the Subcontractor to an equitable adjustment.
- (d) If any change under this Article causes an increase or decrease in the Subcontractor's cost of, or the time required for, the performance of any part of the work under this Subcontract, whether or not changed by any such order, the Institute shall make an equitable adjustment and modify the Subcontract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) above shall be made for any costs incurred more than 20 days before the Subcontractor gives written notice as required. In the case of defective specifications for which JPL is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Subcontractor in attempting to comply with the defective specifications.
- (e) The Subcontractor must assert its right to an adjustment under this Article within 30 days after (i) receipt of a written unilateral modification under paragraph (a) above or (ii) the furnishing of a written notice under paragraph (b) above, by submitting to JPL a written statement describing the general nature and amount of the proposal, unless this period is extended by JPL. The statement of proposal for adjustment may be included in the notice under paragraph (b) above.
- (f) JPL may require change order accounting whenever the estimated cost of a change or series of related changes exceeds \$50,000. The Subcontractor, for each change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the change. The Subcontractor shall maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by JPL.
- (g) No proposal by the Subcontractor for an equitable adjustment shall be allowed if asserted after final payment under this Subcontract.

#### **CLEANING UP**

[T&MC, FPC – 09/04] [FAR 52.236-12 – 04/84]

The Subcontractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Subcontractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Government. Upon completing the work, the Subcontractor shall leave the work area in a clean, neat, and orderly condition satisfactory to JPL. Unless otherwise stated in this Subcontract, the time stated for completion of the work shall include cleaning-up time.

#### **COMPLIANCE WITH COPELAND ACT REQUIREMENTS**

[T&MC, FPC – 09/04] [FAR 52.222-10 – 02/88]

(Work performed outside the United States is exempt from the requirements of this Article.)

The Subcontractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Subcontract.

#### **COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS**

[T&MC, FPC - 09/04] [FAR 52.222-13– 02/88]

(Work performed outside the United States is exempt from the requirements of this Article.)

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3 and 5 are hereby incorporated by reference in this Subcontract.

#### **COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT**

[FP-NR&D, FP-R&D, LH/T&M, T&MC, FPC, A-E – 09/04]

(Work performed outside the United States is exempt from the requirements of this Article.)

- (a) Subcontractor agrees to comply with the Americans with Disabilities Act (42 U.S.C. 12101, et. seq.) and all implementing regulations.



- (b) Subcontractor agrees that it will be responsible to the Government and the Institute for, and will indemnify and hold harmless the Government and the Institute, its trustees, officers, and employees from any loss, cost, damage, expense or liability or suit therefore, by reason of actual or alleged property damage or personal injury of whatever kind or character, arising out of, or in connection with performance of the requirements of paragraph (a) above by the Subcontractor or any of its Lower-tier Subcontracts, however the same may be caused, excepting only such loss, cost, damage, expense or liability attributable to the sole or contributory active negligence of the Government or of the Institute, its trustees, officers, or employees.
- (c) Subcontractor agrees to insert this Article, including (c), in all Lower-tier Subcontracts and purchase orders hereunder.

#### **COMPOSITION OF SUBCONTRACTOR**

[FPC – 09/04]

If the Subcontractor hereunder is composed of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

#### **DATA REMOVAL FROM COMPUTERS**

[CT, FP-NR&D, FP-R&D, CIS, LH/T&M, T&MC, FPC, CREI, A-E, RSA – 12/04] [NPG 2810]

The Subcontractor shall completely overwrite or degauss the media containing all data (which can include sensitive, Privacy Act, proprietary, and mission critical data) from hard drives and other computer storage devices and remove licensed software from Government-owned computers before such computers leave the control of the Subcontractor organization by transfer or disposal. JPL data shall also be removed from Subcontractor-owned computers when the computer leaves the control of the Subcontractor. The Subcontractor shall archive all data required to be retained, pursuant to the "Rights in Data - General" Article. Guidance on what constitutes mission-critical data and sensitive information (such as business and restricted technology information and scientific, engineering, and research information) is contained in NASA Procedure and Guidelines for Security of Information Technology (NPG) 2810, available on the worldwide web or from the JPL Subcontracts Manager. Proprietary data consists of trade secrets and other commercial or financial information confidential to the individual owner or organization. Proprietary data is normally labeled as such. Trade secrets or commercial or financial information that has been released to the public or is otherwise in the possession of persons other than the individual owner or organization is in the public domain and may no longer be entitled to proprietary protection.

The Subcontractor shall submit to JPL a written certification that media containing all JPL data has been overwritten or degaussed from computers when returned to JPL or disposed of.

#### **DAVIS-BACON ACT**

[T&MC, FPC – 09/04] [FAR 52.222-6 – 02/95]

(This Article applies if the amount of the Subcontract is in excess of \$2,000 for construction within the United States. Work performed outside the United States is exempt from the requirements of this Article.)

- (a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Subcontractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this Article; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the Article entitled "Apprentices and Trainees." Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (b) of this Article) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Subcontractor and its Lower-

tier Subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b)

- (1) Except with respect to helpers, as defined in FAR 22.401, the Institute shall require that any class of laborers or mechanics, which is not listed in the wage determination and which is to be employed under the Subcontract shall be classified in conformance with the wage determination. The Institute shall approve an additional classification and wage rate and fringe benefits therefore only when all the following criteria have been met:
  - (A) The work to be performed by the classification requested is not performed by a classification in the wage determination.
  - (B) The classification is utilized in the area by the construction industry.
  - (C) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
  - (D) With respect to helpers, such a classification prevails in the area in which the work is performed.
- (2) If the Subcontractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Institute agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Institute to the Contracting Officer for transmittal to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington DC 20210. The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
- (3) In the event the Subcontractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Institute do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Institute shall submit the question to the Contracting Officer, who shall refer for determination the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
- (4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (b)(2) and (b)(3) of this Article shall be paid to all workers performing in the classification under this Subcontract from the first day on which work is performed in the classification.
- (c) Whenever the minimum wage rate prescribed in the Subcontract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Subcontractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (d) If the Subcontractor does not make payments to a trustee or other third person, the Subcontractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Subcontractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Subcontractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

#### **DEFAULT**

[FPC – 09/04] [FAR 52.249-10 - 04/84]

- (a) If the Subcontractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this Subcontract including any extension, or fails to complete the work within this time, JPL may, by written notice to the Subcontractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, JPL may take over the work and complete it by Subcontract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Subcontractor and its sureties shall be liable for any damage to JPL or the Government resulting from the Subcontractor's refusal or failure to complete the work within the

specified time, whether or not the Subcontractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by JPL in completing the work.

- (b) The Subcontractor's right to proceed shall not be terminated nor the Subcontractor charged with damages under this Article, if:
  - (1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Subcontractor. Examples of such causes include (i) acts of God or of the public enemy, (ii) acts of the Government in either its sovereign or contractual capacity, (iii) acts of another Subcontractor in the performance of a Subcontract with JPL, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of Subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Subcontractor and the Lower-tier Subcontractors or suppliers; and
  - (2) The Subcontractor, within 10 days from the beginning of any delay (unless extended by JPL), notifies JPL in writing of the causes of delay. JPL shall ascertain the facts and the extent of delay. If, in the judgment of JPL, the findings of fact warrant such action, the time for completing the work shall be extended.
- (c) If, after termination of the Subcontractor's right to proceed, it is determined that the Subcontractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued pursuant to the Article of this Subcontract entitled "Termination for Convenience."
- (d) The rights and remedies of JPL in this Article are in addition to any other rights and remedies provided by law or under this Subcontract.

#### **DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS**

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E – 09/04] [FAR 52.211-15 – 09/90]

Incorporate by reference FAR 52.211-15, Defense Priority and Allocation Requirements.

#### **DEFINITIONS**

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, A-E – 09/04] [FAR 52.202-1 –12/01]

As used throughout this Subcontract, the following terms shall have the meanings set forth below:

- (a) The term "Administrator" means the Administrator or Deputy Administrator of the National Aeronautics and Space Administration.
- (b) The term "commercial component" means any component that is a commercial item.
- (c) The term "commercial item" means (see related term "non-developmental item," below):
  - (1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes and that:
    - (A) Has been sold, leased, or licensed to the general public; or
    - (B) Has been offered for sale, lease, or license to the general public;
  - (2) Any item that evolved from an item described in paragraph (c)(1) of this Article through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a solicitation;
  - (3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (2) of this Article, but for:
    - (A) Modifications of a type customarily available in the commercial marketplace; or
    - (B) Minor modifications of a type not customarily available in the commercial marketplace made to meet JPL or Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;
  - (4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this Article that are of a type customarily combined and sold in combination to the general public;
  - (5) Installation services, maintenance services, repair services, training services, and other services if:

- (A) Such services are procured for support of an item referred to in paragraph (c)1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and
- (B) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;
- (6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed. For purposes of these services-
  - (A) "Catalog price" means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or supplier, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and
  - (B) "Market prices" means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.
- (7) Any item, combination of items, or service referred to in subparagraphs (c)(1) through (6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Subcontractor; or
- (8) A non-developmental item, if the procuring activity determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments (see definition below).
- (d) The term "component" means any item supplied as part of an end item or of another component, except that for use in 52.225-9, and 52.225-11 see the definitions in 52.225-9(a) and 52.225-11 (a).
- (e) The term "Subcontract amount" means the Subcontract price, the estimated cost and fee, if any, or the ceiling price of the Subcontract.
- (f) The term "Contracting Officer" means the Government Contracting Officer for the Prime Contract. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.
- (g) The term "Subcontractor" means the selling party to this Subcontract/Order with the California Institute of Technology (the Institute)/JPL being the buying party. The "Subcontractor" is the First tier Subcontractor under the NASA Prime Contract between NASA and the Institute/JPL.
- (h)
  - (1) The term "FAR" means the Federal Acquisition Regulation as in effect on the date of this Subcontract, unless otherwise indicated.
  - (2) Any reference to the Contract Disputes Act is meant to refer to the Disputes provision in this Subcontract if any.
- (i) The term "Government" means the Government of the United States of America, unless the context is otherwise.
- (j) The term "Government-furnished property (GFP)" includes JPL-furnished, Government-owned property.
- (k) The term "Institute" means the California Institute of Technology as a party to this Subcontract.
- (l) The term "JPL" means the Jet Propulsion Laboratory as the organizational element of the Institute having responsibility for administration of this Subcontract. The rights of JPL under this Subcontract are the rights of the California Institute of Technology as a party to this Subcontract.
- (m) The term "JPL Subcontracts Manager" means the individual authorized to issue and administer this Subcontract for JPL.
- (n) The term "NASA" means the National Aeronautics and Space Administration.
- (o) The term "NFS" means the NASA FAR Supplement as in effect on the date of this Subcontract, unless otherwise indicated.
- (p) The term "non-developmental item" means:

- (1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;
  - (2) Any item described in paragraph (p)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring activity; or
  - (3) Any item of supply being produced that does not meet the requirements of paragraph (p)(1) or (2) solely because the item is not yet in use.
- (q) The term "person" means any individual, partnership, corporation, association, institution or other entity.
  - (r) The term "Prime Contract" means the Subcontract between the Institute and NASA for the United States of America (herein called the Government).
  - (s) The term "Schedule" means the statements in the order/contract, including statement of work, description of items to be supplied, delivery dates, special provisions, options and any other statements excluding the General Provisions (the term "General Provisions" includes any "Additional General Provisions"), and any proposals, specifications or other documents or provisions which are made a part of this Subcontract by reference or otherwise.
  - (t) The term "Lower-tier Subcontract," as used in this Subcontract, includes, but is not limited to, purchase orders under this Subcontract.
  - (u) The terms "United States" or "U.S." mean the United States of America.

#### **DIFFERING SITE CONDITIONS**

[FPC – 09/04] [FAR 52.236-2 - 04/84]

- (a) The Subcontractor shall promptly, and before the conditions are disturbed, give a written notice to JPL of (i) subsurface or latent physical conditions at the site which differ materially from those indicated in this Subcontract, or (ii) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the Subcontract.
- (b) JPL shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Subcontractor's cost of, or the time required for, performing any part of the work under this Subcontract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this Article and the Subcontract modified in writing accordingly.
- (c) No request by the Subcontractor for an equitable adjustment to the Subcontract under this Article shall be allowed, unless the Subcontractor has given the written notice required by paragraph (a) above.
- (d) No request by the Subcontractor for an equitable adjustment to the Subcontract for differing site conditions shall be allowed if made after final payment under this Subcontract.

#### **DISPUTES CONCERNING LABOR STANDARDS**

[T&MC, FPC – 09/04] [FAR 52.222-14 – 02/88]

(Work performed outside the United States is exempt from the requirements of this Article.)

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Disputes arising out of the labor standards provisions of this Subcontract shall be resolved in accordance with those procedures. Disputes within the meaning of this Article include disputes between the Subcontractor (or any of its Lower-tier Subcontracts) and the Institute, the National Aeronautics and Space Administration, the U.S. Department of Labor, or the employees or their representatives.

#### **DRUG-FREE WORKPLACE REQUIREMENTS**

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI, A-E – 09/04] [FAR 52.223-6 – 03/01]

The Subcontractor agrees to inform all Subcontractor personnel who work at JPL or are involved with any JPL activity on or off JPL premises that they are required to comply with the JPL "Drug Free Workplace Policy." The Subcontractor further agrees to inform all Subcontractor personnel, working at JPL or involved with any JPL activity on or off JPL premises that JPL's policy is to fully comply with the requirements of the Drug-Free Workplace Act and that Subcontractor personnel are required to comply with JPL's policy of maintaining a drug-free workplace.

The Subcontractor shall institute and maintain a program for achieving a drug and alcohol-free workforce. As a minimum, the program shall provide for pre-employment, reasonable suspicion, random, post-accident, and periodic recurring (follow-up) testing of subcontractor employees in sensitive positions for use, in violation of applicable law or Federal regulation, of alcohol or a controlled substance.

#### **ELECTRICAL EQUIPMENT ACQUISITION**

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/-T&M, FPC, CREI – 09/04]

(This Article is applicable if the Subcontract involves acquisition of off-the-shelf electrical equipment for delivery to or use by JPL or its designees.)

The electrical equipment being provided by the Subcontractor under this Subcontract shall be listed by Underwriters Laboratory, Factory Mutual Insurance Association, Canadian Standards Association, or similar organization of recognized standing. In the event that the equipment does not carry an appropriate approval, the individual components making up the item must be listed. Proof of listing shall be provided with delivery of the equipment in the form of accompanying data or labels. Any item not conforming to these requirements may be returned to the Subcontractor at the Subcontractor's expense. The Subcontractor agrees to require Lower-tier Subcontracts, if any, which supply electrical equipment for delivery to or use by JPL or its designees to comply with this Article.

#### **EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS**

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E, RSA, CIS – 09/04] [FAR 52.222-35 – 12/01]

(This Article is applicable to this Subcontract (and any Lower-tier Subcontract) when the Article at 52.22-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans is applicable.)

Incorporate by reference FAR 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.

#### **ENVIRONMENTAL COMPLIANCE**

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E – 09/04] [FAR 52.223-11 – 05/01; 52.223-12 - 05/95]

(This Article is applicable to all Subcontracts to be performed at least partially within the United States, its possessions, and Puerto Rico.)

- (a) Environmental Compliance. Environmental controls shall be in accordance with all applicable Federal, State and local regulatory requirements and in accordance with all applicable Executive Orders of the President. In addition the Subcontractor shall comply with the provisions set forth below.
- (b) The Subcontractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this Subcontract.
- (c)

- (1) Definition. "Ozone-depleting substance", as used in this clause, means any substance the Environmental Protection Agency (EPA) designates in 40 CFR Part 82 as: (i) Class I, including but not limited to chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or (ii) Class II, including, but not limited to, hydrochlorofluorocarbons.
  - (2) The Subcontractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR Part 82, Subpart E, as follows:

Warning

Contains (or manufactured with, if applicable) (\*)\_\_\_\_\_, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

(\* The Subcontractor shall insert the name of the substance(s))

#### **EQUAL OPPORTUNITY**

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI, A - E, RSA – 09/04] [FAR 52.222-26 – 04/02]

(The following Article is applicable unless this Subcontract is exempt under the rules, regulations, and relevant orders of the Secretary of Labor issued under Executive Order 11246, as amended; for example, work performed outside



the United States by employees who were not recruited within the United States is exempt from the requirements of this Article. If, during any 12-month period [including the 12 months preceding the award of this Subcontract], the Subcontractor has been or is awarded nonexempt Federal Subcontracts and/or Lower-tier Subcontracts that have an aggregate value in excess of \$10,000, the Subcontractor shall comply with FAR 52.222-26 during performance of this Subcontract. Upon request, the Subcontractor shall provide information necessary to determine the applicability of this Article.)

#### **EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS**

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI, A - E, RSA – 09/04] [FAR 52.222-35 - 12/01]

(This Article applies to Subcontracts of \$25,000 or more, unless the work is performed outside the United States by employees recruited outside the United States.)

Incorporate by reference 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C. 4212).

Incorporate by reference FAR 52.222-26, Equal Opportunity (E.O. 11246).

#### **EXPORT LICENSES**

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI – 09/04] [NFS 1852.225-70 – 02/00 (ALT 1 – 02/00)]

- (a) The Subcontractor shall comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799, in the performance of this Subcontract. In the absence of available license exemptions/exceptions, the Subcontractor shall be responsible for obtaining the appropriate licenses or other approvals, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance.
- (b) The Subcontractor shall be responsible for obtaining export licenses, if required, before utilizing foreign persons in the performance of this Subcontract, including instances where the work is to be performed on-site at JPL, where the foreign person will have access to export-controlled technical data or software.
- (c) The Subcontractor shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions.
- (d) The Subcontractor shall be responsible for ensuring that the provisions of this clause apply to its Lower-tier Subcontracts.
- (e) The Subcontractor may request, in writing, that the Contracting Officer authorize it to export ITAR-controlled technical data (including software) pursuant to the exemption at 22 CFR 125.4(b)(3). The Contracting Officer or designated representative may authorize or direct the use of the exemption where the data does not disclose details of the design, development, production, or manufacture of any defense article.

#### **FACSIMILE COPIES ACCEPTABLE**

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI, A - E, RSA – 09/04]

The parties agree that facsimile (fax) copies of Subcontract documents are just as binding as originally executed documents.

#### **FEDERAL, STATE, AND LOCAL TAXES**

[FP-NR&D, FP-R&D, FPC, A - E – 09/04] [FAR 52.229-3 - 04/03]

- (a) Items of tangible personal property to be delivered under this Subcontract are for resale to the United States Government (California Resale Certificate No. SR AP 17-006226).
- (b) FAR 52.229-3 is hereby incorporated by reference, except that the letters “JPL” shall be substituted for the words “the Contracting Officer” and the words “the Government” wherever they appear.

#### **LOWER-TIER SUBCONTRACTORS**

[FPC – 09/04]

- (a) The Subcontractor shall within seven days after receipt of written Notice of Award, if any, or if none, within seven days after receipt of the fully executed Subcontract documents, furnish to JPL a list of all Lower-tier Subcontracts that involve performance of work at the site. The Subcontractor shall provide written notice of any work with any



person or firm other than those Lower-tier Subcontractors named in the submitted list seven days prior to their performance or work at the site.

- (b) Nothing contained in this Subcontract shall create any contractual relationship between a Lower-tier Subcontractor and the Institute. The Subcontractor shall be at all times responsible for the work of its Lower-tier Subcontractors to the same extent as if the Subcontractor were doing or had done the work.

#### **LOWER-TIER SUBCONTRACTS - LABOR STANDARDS**

[T&MC, FPC – 09/04] [FAR 52.222-11 – 02/88]

(Work performed outside the United States is exempt from the requirements of this Article.)

- (a) The Subcontractor or Lower-tier Subcontractor shall insert in any Lower-tier Subcontracts the Articles entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act - Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with Copeland Act Requirements," "Withholding of Funds," "Subcontracts (Labor Standards)," "Contract Termination - Debarment," "Disputes Concerning Labor Standards," "Compliance with Davis-Bacon and Related Act Regulations," and "Certification of Eligibility," and such other Articles as the Institute may by appropriate instructions require, and also a clause requiring the Lower-tier Subcontractors to include these Articles in any lower-tier subcontracts. The Subcontractor shall be responsible for the compliance by any Lower-tier Subcontractor or lower-tier subcontractor with all the Subcontract Articles cited above.
- (b)
  - (1) Within 14 days after award of the Subcontract, the Subcontractor shall deliver to JPL a completed "Incorporation of Labor Standards Provisions," form JPL 3557, for each Lower-tier Subcontract, including the Lower-tier Subcontractor's signed and dated acknowledgment that the Articles set forth in paragraph (a) of this Article have been included in the Lower-tier Subcontract.
  - (2) Within 14 days after the award of any subsequently awarded Lower-tier Subcontract, the Subcontractor shall deliver to JPL an updated completed form JPL 3557 for such additional subcontract.

#### **LOWER-TIER SUBCONTRACT S FOR COMMERCIAL ITEMS**

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A -E – 09/04] [FAR 52.244-6 – 05/02]

- (a) Definition.
  - (1) "Commercial item," as used in this Article, has the meaning contained in the "Definitions" Article and in FAR 52.202-1, "Definitions."
  - (2) " Lower-tier Subcontract," as used in this Article, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Subcontractor or Lower-tier Subcontractor at any tier.
- (b) To the maximum extent practicable, the Subcontractor shall incorporate, and require its Lower-tier Subcontractors at all tiers to incorporate, commercial items or non-developmental items as components of items to be supplied under this Subcontract.
- (c)
  - (1) The Subcontractor shall insert the following clauses in Lower-tier Subcontracts for commercial items:
    - (i) 52.219-8, Utilization of Small Business Concerns (Oct 200) (15 U.S.C. 637(d)(2)(3)), in all Lower-tier Subcontracts that offer further Lower-tier Subcontracting opportunities. If the Lower-tier Subcontract (except Lower-tier Subcontracts to small business concerns) exceed \$500,000 (\$1,000,000 for construction of any public facility), the Lower-tier Subcontractor must include 52.219-8 in lower tier Lower-tier Subcontracts that offer Lower-tier Subcontracting opportunities.
    - (ii) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).
    - (iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212(a));
    - (iv) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793).
    - (v) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631) (flow down required in accordance with paragraph (d) of FAR clause 52.247-64).

- (2) While not required, the Subcontractor may flow down to Lower-tier Subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.
- (d) The Subcontractor shall include the terms of this Article, including this paragraph (d), in Lower-tier Subcontracts awarded under this Subcontract.

#### **GOVERNMENT PROPERTY**

[FP-NR&D, FP-R&D, LH/T&M, T&MC, FPC, A - E – 09/04] [FAR 52.245-4 – 06/03]

- (a) JPL shall deliver to the Subcontractor, at the time stated in the Schedule, or, if not so stated, in sufficient time to enable the Subcontractor to meet the delivery or performance schedule, the Government-owned property described as JPL-furnished property in the Schedule or specifications. If that property, suitable for its intended use, is not delivered to the Subcontractor, JPL shall equitably adjust affected provisions of this Subcontract in accordance with the Changes Article when:
- (1) The Subcontractor submits a timely written request for an equitable adjustment; and
  - (2) The facts warrant an equitable adjustment.
- (b) Title to JPL-furnished property shall remain in the Government. The Subcontractor shall use the JPL-furnished property only in connection with this Subcontract. The Subcontractor shall maintain adequate property control records in accordance with sound industrial practice and will make such records available for JPL or Government inspection at all reasonable times.
- (c) Upon delivery of JPL-furnished property to the Subcontractor, the Subcontractor assumes the risk and responsibility for its loss or damage, except:
- (1) For reasonable wear and tear;
  - (2) To the extent property is consumed in performing this Subcontract; or
  - (3) As otherwise provided for by the provisions of this Subcontract.
- (d) Upon completing this Subcontract, the Subcontractor shall follow the instructions of JPL regarding the disposition of all JPL-furnished property not consumed in performing this Subcontract or previously delivered to JPL. The Subcontractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by JPL. The net proceeds of any such disposal shall be credited to the Subcontract price or shall be paid as directed by JPL.
- (e) If this Subcontract is to be performed outside the United States and its outlying areas, the words "Government" and "JPL-furnished" (wherever they appear in this Article) shall be construed as "United States Government" and "United States Government-owned/JPL-furnished," respectively.
- (f) If JPL-furnished property has been provided to the Subcontractor under this Subcontract, the Subcontractor shall submit NASA Form 1018, "The Report of Government-Owned/Contractor-Held Property" (or equivalent) (or a negative report, if applicable); to JPL monthly and annually (date to be determined by JPL).

#### **HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA**

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI – 09/04] [FAR 52.223-3 – 01/97, Alt. I – 07/95]

(This Article applies if any materials are to be supplied which are defined as hazardous under the latest version of Federal Standard No. 313 [including revisions adopted during the term of the Subcontract].

Incorporate FAR 52.223-3 [Jan 97, Alt. I, Jul 95] with JPL Subcontracts Manager in lieu of Contracting Officer and adding JPL with the Government in all respects including safety and rights to data.)

#### **INJURY AND ILLNESS PREVENTION PROGRAM**

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E – 09/04]

All Subcontractors whose personnel work at a site in California must establish and implement an effective injury and illness prevention program in compliance with California law.

#### **INSPECTION OF CONSTRUCTION**

[FPC – 09/04] [FAR 52.246-12 – 08/96]

- (a) "Work," as used in this Article, includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.

- (b) The Subcontractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work called for by this Subcontract conforms to Subcontract requirements. The Subcontractor shall maintain complete inspection records and make them available to JPL. All work shall be conducted under the general direction of JPL and is subject to JPL inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the Subcontract.
- (c) JPL inspections and tests are for the sole benefit of JPL and do not:
  - (1) Relieve the Subcontractor of responsibility for providing adequate quality control measures;
  - (2) Relieve the Subcontractor of responsibility for damage to or loss of the material before acceptance;
  - (3) Constitute or imply acceptance; or
  - (4) Affect the continuing rights of JPL after acceptance of the completed work under paragraph (i) below.
- (d) The presence or absence of a JPL inspector does not relieve the Subcontractor from any Subcontract requirement, nor is an inspector authorized to change any term or condition of any specification, unless such inspector has been authorized to make such changes in accordance with the Article entitled "Authority of JPL Representatives."
- (e) The Subcontractor shall promptly furnish, at no increase in Subcontract price, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by JPL. JPL may charge to the Subcontractor any additional cost of inspection or test when work is not ready at the time specified by the Subcontractor for inspection or test, or when prior rejection makes re-inspection or retest necessary. JPL shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the Subcontract.
- (f) The Subcontractor shall, without charge, replace or correct work found by JPL not to conform to Subcontract requirements, unless JPL consents to accept the work with an appropriate adjustment in Subcontract price. The Subcontractor shall promptly segregate and remove rejected material from the premises.
- (g) If the Subcontractor does not promptly replace or correct rejected work, JPL may (i) by Subcontract or otherwise, replace or correct the work and charge the cost to the Subcontractor or (ii) terminate for default the Subcontractor's right to proceed.
- (h) If, before acceptance of the entire work, JPL decides to examine already completed work by removing it or tearing it out, the Subcontractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Subcontractor or its Lower-tier Subcontracts, the Subcontractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet Subcontract requirements, the Institute shall make an equitable adjustment in the Subcontract price for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.
- (i) Unless otherwise specified in the Subcontract, JPL shall accept, as promptly as practicable after completion and inspection, all work required by the Subcontract or that portion of the work JPL determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or JPL's rights under any warranty or guarantee.

#### **INSURANCE AND INDEMNIFICATION – FIXED-PRICE CONSTRUCTION**

[FPC – 09/04] [FAR 52.228-5 – 01/97]

(This Article is applicable if the Subcontract amount exceeds \$100,000 and if this Subcontract requires work on a Government installation or premises under the control of the Institute, unless (i) only a small amount of work is required on the Government installation or Institute-controlled premises; or (ii) all such work is to be performed outside the United States, its possessions, or Puerto Rico.)

- (a) Insurance. The Subcontractor shall, at its own expense, provide and maintain during the entire performance period of this Subcontract at least the following kinds and minimum amounts of insurance with the Institute named as an additional insured in policies for comprehensive liability insurance with a carrier licensed and admitted in the State of California.
  - (1) Workers' Compensation and Employer's Liability Insurance, as required by applicable Federal and state workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the Employer's Liability section of the insurance policy, except when Subcontract operations are so commingled with the Subcontractor's commercial operations

that it would not be practical. The Employer's Liability coverage shall be at least \$100,000, except in states with exclusive or monopolistic funds that do not permit worker's compensation to be written by private carriers. However, the Subcontractor in fulfillment of its obligation to provide Workers' Compensation Insurance may maintain a self-insurance program if the Subcontractor is qualified pursuant to statutory authority to do so.

- (2) Comprehensive Liability Insurance, including automobiles (owned, non-owned, or leased), completed operations, products, and contractual liability, for a combined single limit of not less than \$1,000,000 for all deaths, injuries, and property damage arising from one accident or occurrence.
  - (3) Builders Risk or Course of Construction "All Risks" coverage, excluding earthquake and flood, covering damage to the work itself, including materials and supplies at the work site, protecting the interests of the Government, the Institute, the Subcontractor, and Lower-tier Subcontracts, in a sufficient amount to pay in full each loss exclusive of a deductible not to exceed \$5,000.
- (b) Insurance Certificates and Endorsements. Before commencing work under this Subcontract, the Subcontractor shall furnish (i) certificates of insurance for the coverages specified in (a) above, and (ii) an additional insured endorsement naming the Institute as an additional insured to the Subcontract for the coverage specified in (a)(2) above. Such certificates and the endorsement shall provide that any cancellation or material change in the insurance policies shall not be effective (i) for such period as the laws of the State in which this Subcontract is to be performed prescribe, or (ii) until 30 days after the insurer or the Subcontractor gives written notice to JPL, whichever period is longer. Also, such certificates and the endorsement shall (i) cover contractual liability assumed under this Subcontract, and (ii) be primary and non-contributing to any insurance procured by the Institute. The Subcontractor agrees to permit the Institute to examine its original policies, should the Institute so request. Should the Subcontractor at any time neglect or refuse to provide the insurance required herein, or should such insurance be canceled, the Institute shall have the right to procure same and the costs thereof shall be deducted from monies then due or thereafter to become due to the Subcontractor.
- (c) Indemnification. The Subcontractor agrees that it will be responsible to the Government and the Institute for, and will indemnify and hold harmless the Government and the Institute, its trustees, officers, and employees, from any loss, cost, damage, expense or liability, attorney's fees, or any suit therefore, by reason of actual or alleged property damage or personal injury of whatsoever kind or character, arising out of or in connection with the performance of work hereunder by the Subcontractor or any of its Lower-tier Subcontracts, howsoever the same may be caused, including any of the same resulting from alleged or actual negligent act or omission, regardless of whether such act or omission is active or passive, but excepting only such loss, cost, damage, expense or liability attributable to the sole negligence or willful misconduct of the Government or of the Institute, its trustees, officers or employees.
- (d) Lower-tier Subcontracts. The Subcontractor shall insert the substance of this Article, including this paragraph (d), in Lower-tier Subcontracts under this Subcontract which exceed \$100,000 if the Lower-tier Subcontract requires work on a Government installation or premises under the control of the Institute, unless (i) only a small amount of work is required on the Government installation or Institute-controlled premises; or (ii) all such work is to be performed outside the United States, its possessions, or Puerto Rico, modified as necessary to correctly identify the parties. At least five days before entry of each such Lower-tier Subcontractor's personnel on the Government installation or Institute-controlled premises, the Subcontractor shall furnish (or ensure that there has been furnished) to JPL a current certificate of insurance, meeting the requirements of paragraph (b) above, for each such Lower-tier Subcontractor.

#### **LAYOUT OF WORK AND SURVEYS**

[FPC – 09/04] [FAR 52.236-17 – 04/84]

- (a) The Subcontractor shall complete the layout of the work and shall be responsible for all measurements that may be required for the execution of the work to the location and limit marks prescribed in the specifications or drawings.
- (b) The Subcontractor shall furnish, at its own expense, stakes, templates, platforms, equipment, tools and material, and all labor as may be required in laying out any part of the work. It shall be the responsibility of the Subcontractor to maintain and preserve all stakes and other marks established by JPL until authorized to remove them; and if such marks are destroyed or removed by the Subcontractor prior to their authorized removal, they may be replaced by JPL at its discretion and the expense or replacement will be deducted from any amounts due or to become due the Subcontractor. JPL may require that work be suspended at any time that location and limit marks established by the Subcontractor are not reasonably adequate to permit checking of the work.

## **LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E, RSA – 09/04] [FAR 52.203-12 – 06/97]

(This Article applies if this Subcontract is expected to exceed \$100,000.)

Incorporate by reference FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions (June 1997).

## **MATERIAL AND WORKMANSHIP**

[T&MC, FPC – 09/04]

- (a) All equipment, material, and articles incorporated into the work covered by this Subcontract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this Subcontract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Subcontractor may, at its option, use any equipment, material, article, or process that, in the judgment of JPL, is equal to that named in the specifications, unless otherwise specifically provided in this Subcontract.
- (b) The Subcontractor shall obtain JPL's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Subcontractor shall furnish to JPL the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this Subcontract or by JPL, the Subcontractor shall also obtain JPL's approval of the material or articles that the Subcontractor contemplates incorporating into the work. When requesting approval, the Subcontractor shall provide full information concerning the material or articles. When directed to do so, the Subcontractor shall submit samples for approval at the Subcontractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.
- (c) All work under this Subcontract shall be performed in a skillful and workmanlike manner. JPL may require, in writing, that the Subcontractor removes from the work any employee JPL deems incompetent, careless, or otherwise objectionable.

## **MATERIAL REQUIREMENTS**

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI – 09/04] [FAR 52.211-5 – 08/00]

- (a) Definitions (As used in this Article).
  - (1) New means composed of previously unused components, whether manufactured from virgin material, recovered material in the form of raw material, or materials and by-products generated from, and reused within, an original manufacturing process; provided that the supplies meet Subcontract requirements, including but not limited to, performance, reliability, and life expectancy.
  - (2) Reconditioned means restored to the original normal operating condition by readjustments and material replacement.
  - (3) Recovered material means waste materials and by-products that have been recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.
  - (4) Remanufactured means factory rebuilt to original specifications.
  - (5) Virgin material means previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore, or any undeveloped resource that is, or with new technology will become, a source of raw materials.
- (b) Unless this Subcontract otherwise requires virgin material or supplies composed of or manufactured from virgin material, the Subcontractor shall provide supplies that are new, reconditioned, or remanufactured, as defined in this Article.
- (c) A proposal to provide unused former Government surplus property shall include a complete description of the material, the quantity, the name of the Government agency from which acquired, and the date of acquisition.
- (d) A proposal to provide used, reconditioned, or remanufactured supplies shall include a detailed description of such supplies and shall be submitted to JPL for approval.



- (e) Used, reconditioned, or remanufactured supplies, or unused former Government surplus property, may be used in Subcontract performance if the Subcontractor has proposed the use of such supplies, and JPL has authorized their use.

#### **NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT**

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E, RSA – 09/04] [FAR 52.227-2 – 08/96]

(The provisions of this Article shall be applicable only if the amount of this Subcontract is expected to exceed \$100,000, except when complete performance and delivery are outside the United States, its possessions, and Puerto Rico, unless ultimate delivery is into those areas.)

- (a) The Subcontractor shall report to the Contracting Officer and JPL, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Subcontract of which the Subcontractor has knowledge.
- (b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this Subcontract or out of the use of any supplies furnished or work or services performed under this Subcontract, the Subcontractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Subcontractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Subcontractor has agreed to indemnify the Government.
- (c) The Subcontractor agrees to include, and require inclusion of; this Article in all Lower-tier Subcontracts at any tier for supplies or services (including construction and architect-engineer Lower-tier Subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed \$100,000.

#### **NOTICE OF BUY AMERICAN ACT REQUIREMENT – CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS**

[FPC, T&MC – 09/04] [FAR 52.225-12 – 05/02]

- (a) Definitions. "Construction material," "designated country construction material," "domestic construction material," "foreign construction material," and "NAFTA country construction material," as used in this provision, are defined in the clause of this solicitation entitled "Buy American Act-Construction Materials under Trade Agreements" (Federal Acquisition Regulation (FAR) clause 52.225-11).
- (b) Requests for determination of inapplicability. An offeror requesting a determination regarding the inapplicability of the Buy American Act should submit the request to the JPL Subcontracts Manager in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225-11 in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.
- (c) Evaluation of offers.
  - (1) The Government through JPL will evaluate an offer requesting exception to the requirements of the Buy American Act, based on claimed unreasonable cost of domestic construction materials, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(4)(i) of FAR clause 52.225-11.
  - (2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not request an exception, JPL will award to the offeror that did not request an exception based on unreasonable cost.
- (d) Alternate offers.
  - (1) When an offer includes foreign construction material, other than designated country or NAFTA country construction material, that is not listed in paragraph (b)(3) of FAR clause 52.225-11, the offeror also may submit an alternate offer based on use of equivalent domestic, designated country, or NAFTA country construction material.
  - (2) If an alternate offer is submitted, the offeror shall submit it separately, with a separate price comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225-11 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

- (3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225-11 does not apply, JPL will evaluate only those offers based on use of the equivalent domestic, designated country, or NAFTA country construction material, and the offeror shall be required to furnish such domestic, designated country, or NAFTA country construction material. An offer based on use of the foreign construction material for which an exception was requested:
- (i) Will be rejected as non-responsive if this acquisition is conducted by sealed bidding; or
  - (ii) May be accepted if revised during negotiations.

#### **NOTICE OF RADIOACTIVE MATERIALS**

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI – 09/04] [FAR 52.223-7 – 01/97]

(This Article is applicable only if this Subcontract is for radioactive materials as defined in this provision.)

Incorporate FAR 52.223-7 (January 1997) inserting 30 days in paragraph (a), with JPL Subcontracts Manager in lieu of Contracting Officer, and adding JPL with the Government in all respects.

#### **NOTICE TO JPL OF LABOR DISPUTES**

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E – 09/04] [FAR 52.222-1 – 02/97]

- (a) If the Subcontractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Subcontract, the Subcontractor shall immediately give notice to JPL. The initial notice shall include the following:
- (1) Identification of parts/materials, etc., which are or may be affected;
  - (2) Brief description of work-around plans to avoid delivery or performance delays. If the actual or potential dispute involves a lower-tier subcontractor, advise as to potential alternate sources;
  - (3) Other Government agencies having responsibility for any functions concerning the affected operation, e.g., quality control, agency resident representative, etc., and the title, name and telephone of the agency representative.
  - (4) Other Government agencies which have been notified of the situation, and if available, the title, name and telephone number of any representative of another agency who is involved with the actual or threatened labor dispute;
  - (5) Specific information regarding transportation of parts/materials or personnel which is or may be affected;
  - (6) Manufacturer/ Lower-tier Subcontractor and union data to include:
    - (A) Name, address and telephone numbers of the manufacturer/ Lower-tier Subcontractor representative and Industrial Relations Representative to be contacted for further information;
    - (B) Union's name and local lodge number, if known.

If any of the required information is not available when providing the initial notice, indicate when it is estimated that such information can be provided.

- (b) The Subcontractor agrees to insert the substance of this Article, including this paragraph (b), in any Lower-tier Subcontract to which a labor dispute may delay the timely performance of this Subcontract; except that each such Lower-tier Subcontract shall provide that, in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the Lower-tier Subcontractor shall immediately notify the next higher-tier Lower-tier Subcontractor or JPL, as the case may be, concerning the dispute.

#### **NOTIFICATION OF OWNERSHIP CHANGES**

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, A - E CREI – 09/04] [FAR 52.215-19 – 10/97]

(This Article is applicable if it is contemplated that cost or pricing data will be required or for which any pre-award or post-award cost determination will be subject to Subpart 31.2)

- (a) The Subcontractor shall make the following notifications in writing:
- (1) When the Subcontractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Subcontractor shall notify JPL within 30 days.



- (2) The Subcontractor shall also notify JPL within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.
- (b) The Subcontractor shall:
  - (1) Maintain current, accurate, and complete inventory records of assets and their costs;
  - (2) Provide JPL ready access to the records upon request;
  - (3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Subcontractor's ownership changes; and
  - (4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Subcontractor ownership change.
- (c) The Subcontractor shall include the substance of this clause in all Lower-tier Subcontracts under this Subcontract that meet the applicability requirement of FAR 15.408(k).

#### **OPERATIONS, FACILITIES AND STORAGE AREAS**

[FPC - 09/04] [FAR 52.236-10 – 04/84]

- (a) Unless otherwise approved by JPL, the Subcontractor shall provide and maintain, for the duration of the work, its own office on the job site.
- (b) All operations of the Subcontractor (including storage of materials) upon JPL-controlled premises shall be confined to areas authorized or approved by JPL. No unauthorized entry upon, or passage through, or storage or disposal of materials shall be made upon, JPL-controlled premises.
- (c) Temporary buildings (storage sheds, shops, offices, etc.) may be erected by the Subcontractor only with approval of JPL, and either may be of a removable, portable type, or may be erected by the Subcontractor with labor and materials furnished by the Subcontractor without expense to the Institute. Such temporary buildings shall remain the property of the Subcontractor and shall be removed by the Subcontractor at its expense upon the completion of the work. With the written consent of JPL, such buildings may be abandoned and need not be removed.
- (d) The Subcontractor shall, under regulations prescribed by JPL, use only established roadways or construct and use such temporary roadways as may be authorized by JPL. Where materials are transported in the prosecution of the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbing or sidewalks, protection against damage shall be provided by the Subcontractor and any roads, curbing, or sidewalks damaged by the Subcontractor, its Lower-tier Subcontractors, or by the agents, servants, or employees of the Subcontractor or Lower-tier Subcontractor, shall be repaired by, or at the expense of the Subcontractor.
- (e) The Subcontractor shall hold and save the Institute, its trustees, officers, and agents free and harmless from liability of any nature occasioned by the Subcontractor's performance.

#### **ORDER OF PRECEDENCE**

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E, RSA – 09/04] [FAR 52.215-8 – 10/97]

- (a) The rights and obligations of the parties of this Subcontract shall be subject to and governed by the Schedule, the General Provisions (the term "General Provisions" includes any "Additional General Provisions"), and any proposals, specifications or other documents or provisions which are made a part of this Subcontract by reference or otherwise.
- (b) To the extent of any inconsistency between (i) the Schedule, other than the Alterations Article, (ii) the Alterations Article in the Schedule, and (iii) the GPs, the inconsistency will be resolved in the following order of priority:
  - (1) The Alterations Article.
  - (2) The GPs not altered.
  - (3) The Schedule, other than the Alterations Article.
- (c) To the extent of any inconsistency between

- (1) the Schedule, other than any proposals, specifications or other documents or provisions which are made a part of this Subcontract by reference or otherwise, in the Schedule, and
  - (2) any proposals, specifications or other documents or provisions which are made a part of this Subcontract by reference or otherwise in the Schedule,
  - (3) (c)(1) has order of precedence over (c)(2).
- (d) All provisions of this Subcontract which are required by their terms to be included in Lower-tier Subcontracts shall be required by the Subcontractor to take precedence in the Lower-tier Subcontract over any other provisions.

## **OTHER SUBCONTRACTS**

[T&MC, FPC – 09/04] [FAR 52.236-8 - 04/84]

- (a) JPL may undertake or award other Subcontracts for additional work at or near the site of the work under this Subcontract. The Subcontractor shall fully cooperate with the other Subcontractors and with JPL employees and shall carefully adapt scheduling and performing the work under this Subcontract to accommodate the additional work, heeding any direction that may be provided by JPL. The Subcontractor shall not commit or permit any act that will interfere with the performance of work by any other Subcontractor or by JPL employees.
- (b) Where the Subcontractor's work is associated with that of another Subcontractor, the Subcontractor shall examine the adjacent work and report in writing to JPL any defect or condition preventing the proper performance of this Subcontract. If the Subcontractor proceeds without giving such notice, the Subcontractor shall be held to have accepted the work or materials and the existing conditions, and shall be responsible for any defects in its own work, and shall not be relieved of the obligation of any warranty because of any such condition or imperfection.

## **PAYMENTS**

[FPC – 09/04] [FAR 52.232-5 – 10/02]

- (a) General. JPL shall pay the Subcontractor the Subcontract price as provided in this Subcontract.
- (b) Progress Payments. JPL shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by JPL, on estimates of work accomplished which meet the standards of quality established under the Subcontract, as approved by JPL.
  - (1) The Subcontractors request for progress payments shall include the following substantiation:
    - (A) An itemization of the amounts requested, related to the various elements of work required by the Subcontract covered by the payment requested.
    - (B) A listing of the amount included for work performed by each Lower-tier Subcontractor under the Subcontract.
    - (C) A listing of the total amount of each Lower-tier Subcontract under the Subcontract.
    - (D) A listing of the amounts previously paid to each such Lower-tier Subcontractor under the Subcontract.
    - (E) Additional supporting data in a form and detail required by JPL.
  - (2) In the preparation of estimates, JPL may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Subcontractor at locations other than the site may also be taken into consideration if:
    - (A) Consideration is specifically authorized by this Subcontract; and
    - (B) The Subcontractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this Subcontract.
- (c) Subcontractor Certification. Along with each request for progress payments, the Subcontractor shall furnish the following certification, or payment shall not be made. (However, if the Subcontractor elects to delete paragraph (c)(4) from the certification, the certification is still acceptable.)

I hereby certify, to the best of my knowledge and belief, that:

- (1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the Subcontract;

- (2) All payments due to Lower-tier Subcontracts and suppliers have been made from previous payments received under the Subcontract have been made and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with Lower-tier Subcontract agreements and the requirements of chapter 39 of Title 31, United States Code;
- (3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a Lower-tier Subcontractor or supplier in accordance with the terms and conditions of the Lower-tier Subcontract; and
- (4) This certification is not to be construed as final acceptance of a Lower-tier Subcontractor's performance.

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Name

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Title

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Date

- (d) Refund of Unearned Amounts. If the Subcontractor, after making a certified request for progress payments, discovers that a portion or all of such request constitutes a payment for performance by the Subcontractor that fails to conform to the specifications, terms, and conditions of this Subcontract (hereinafter referred to as the "unearned amount"), the Subcontractor shall:
  - (1) Notify JPL of such performance deficiency, and
  - (2) Be obligated to pay JPL an amount (computed by JPL in the manner provided in paragraph (j) of this article) equal to interest on the unearned amount from the eighth day after the date of receipt of the unearned amount until:
    - (A) The date the Subcontractor notifies JPL that the performance deficiency has been corrected; or
    - (B) The date the Subcontractor reduces the amount of any subsequent certified request for progress payments by an amount equal to the unearned amount.
- (e) Retention. If JPL finds that satisfactory progress was achieved during any period for which a progress payment is to be made, JPL shall authorize payment to be made in full. However, if satisfactory progress has not been made, JPL may retain a maximum of 10 percent of the amount of the payment until satisfactory progress is achieved. When the work is substantially complete, JPL may retain from previously withheld funds and future progress payments that amount JPL considers adequate for protection of the Institute and shall release to the Subcontractor all the remaining withheld funds. Also, on completion and acceptance of each separate building, public work, or other division of the Subcontract for which the price is stated separately in the Subcontract, payment shall be made for the completed work without retention of a percentage.
- (f) Title Liability and Reservation of Rights. All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as:
  - (1) Relieving the Subcontractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or
  - (2) Waiving the right of JPL to require the fulfillment of all of the terms of the Subcontract.
- (g) Reimbursement for Bond Premiums. In making these progress payments, JPL shall, upon request, reimburse the Subcontractor for the entire amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Subcontractor has furnished JPL evidence of full payment to the surety. The retention provisions in paragraph (e) of this Article shall not apply to that portion of progress payments attributable to bond premiums.
- (h) Final Payment. JPL shall pay the amount due the Subcontractor under this Subcontract after:
  - (1) Completion and acceptance of all work;
  - (2) Presentation of a properly executed voucher; and
  - (3) Presentation of release of all claims against the Institute arising by virtue of this Subcontract, other than claims, in stated amounts, which the Subcontractor has specifically accepted from the operation of the release. A release may also be required of the assignee if the Subcontractor's claim to amounts payable

under this Subcontract has been assigned under the "Assignment of Rights and Delegation of Duties" Article of this Subcontract.

- (i) If the Subcontractor fails to return the release described in paragraph (h)(3) above with the release either executed for the amount determined by JPL or with a different amount within 60 days of JPL's request, JPL may make final payment in the amount determined by JPL and the release (for the JPL-determined amount) described in (g) (3) above will be deemed to have been executed and delivered by the Subcontractor.
- (j) Interest computation on unearned amounts. In accordance with 31 U.S.C. 3903(c)(1), the amount payable under subparagraph (d)(2) of this article shall be:
  - (1) Computed at the rate of average bond equivalent rates of 91 day Treasury bills auctioned at the most recent auction of such bills prior to the date the Subcontractor receives the unearned amount; and
  - (2) Deducted from the next available payment to the Subcontractor
- (k) Limitation Because of Undefined Work. Notwithstanding any provision of this Subcontract, progress payments shall not exceed 80 percent on work accomplished on undefined Subcontract actions. A "Subcontract action" is any action resulting in a Subcontract, as defined in FAR Subpart 2.1, including Subcontract modifications for additional supplies or services, but not including Subcontract modifications that are within the scope and under the terms of the Subcontracts, such as Subcontract modifications issued pursuant to the Changes article, or funding and other administrative changes.

## **PAYROLLS AND BASIC RECORDS**

[T&MC, FPC – 09/04] [FAR 52.222-8 – 02/88]

(Work performed outside the United States is exempt from the requirements of this Article.)

- (a) Payrolls and basic records relating thereto shall be maintained by the Subcontractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under paragraph (d) of the Article entitled "Davis-Bacon Act" that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- (b)
  - (1) The Subcontractor shall submit weekly for each week in which any Subcontract work is performed a copy of all payrolls to the Institute. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this Article. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005- 00014-1), U.S. Government Printing Office, Washington, DC 20402. The Subcontractor is responsible for the submission of copies of payrolls by all Lower-tier Subcontractors.
  - (2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Subcontractor or Lower-tier Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Subcontract and shall certify the following:
    - (A) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this Article entitled "Payrolls and Basic Records" and that such information is correct and complete;
    - (B) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Subcontract during the payroll period has been paid the full weekly wages earned, without rebate, either

directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

- (C) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Subcontract.
- (3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b)(2) of this Article.
- (4) The falsification of any of the certifications in this Article may subject the Subcontractor or Lower-tier Subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.
- (c) The Subcontractor or Lower-tier Subcontractor shall make the records required under paragraph (a) of this Article available for inspection, copying, or transcription by the Institute, the Contracting Officer, or the Department of Labor or their authorized representatives. The Subcontractor or Lower-tier Subcontractor shall permit such representatives to interview employees during working hours on the job. If the Subcontractor or Lower-tier Subcontractor fails to submit the required records or to make them available, the Institute may, after written notice to the Subcontractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

## **PERMITS AND RESPONSIBILITIES**

[T&MC, FPC – 09/04] [FAR 52.236-7 – 11/91]

The Subcontractor shall, without additional expense to JPL, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Subcontractor shall also be responsible for all damages to persons or property that occur as a result of the Subcontractor's fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others, including, but not limited to, the enclosing of the Subcontractor's work area with adequate barricades and, where appropriate, flashing lights as approved by JPL. The Subcontractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the Subcontract. The Subcontractor agrees to indemnify the Institute and the Government against any loss, cost, liability, or damage by reason of the Subcontractor's violation of or failure to comply with any applicable laws, executive orders, or regulations.

## **PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS**

[CT, CIS, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI – 09/04] [FAR 52.247-64 – 06/00]

- (a) Except as provided in paragraph (b) below, the Subcontractor shall use privately owned U.S.-flag commercial vessels, and no others, in the ocean transportation of any supplies to be furnished under this Subcontract.
- (b) If such vessels are not available for timely shipment at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels, the Subcontractor shall notify JPL and request (i) authorization to ship in foreign-flag vessels or (ii) designation of available U.S.-flag vessels. If the Subcontractor is authorized in writing by JPL to ship the supplies in foreign-flag vessels, the Subcontract price shall be equitably adjusted to reflect the difference in costs of shipping the supplies in privately owned U.S.-flag commercial vessels and in foreign-flag vessels.
- (c)
  - (1) The Subcontractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both (i) the Contracting Officer and (ii) the Office of Cargo Preference, Maritime Administration (MAR-590) 400 Seventh Street, SW, Washington, D.C. 20590. Subcontractor and Lower-tier Subcontractor bills of lading shall be submitted through JPL.
  - (2) The Subcontractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:
    - (A) NASA shown as the sponsoring U.S. Government agency.
    - (B) Name of vessel.
    - (C) Vessel flag of registry.
    - (D) Date of loading.
    - (E) Port of loading.
    - (F) Port of final discharge.
    - (G) Description of commodity.
    - (H) Gross weight in pounds and cubic feet, if available.
    - (I) Total ocean freight revenue in U.S. dollars.
- (d) The Subcontractor shall insert the substance of this Article, including this paragraph (d), in all Lower-tier Subcontracts or purchase orders under this Subcontract.
- (e) The requirement in paragraph (a) does not apply to:
  - (1) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;
  - (2) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353);
  - (3) Shipments of classified supplies when the classification prohibits the use of non-Government vessels; and

- (f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the Office of Costs and Rates, Maritime Administration, 400 Seventh Street, SW, Washington, DC 20590, Phone: 202-366-4610.

#### **PREFERENCE FOR U.S.-FLAG AIR CARRIERS**

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E - 09/04] [FAR 52.247-63 - 01/97]

(This Article does not apply to Subcontracts or Lower-tier Subcontracts for supplies, nonpersonal services, and construction that do not exceed \$100,000. This Article is not applicable to the acquisition of commercial items or commercial components.)

Incorporate by reference FAR 52.247-63, Preference for U.S.-Flag Air Carriers.

#### **PRICING OF SUBCONTRACTOR-FURNISHED PROPERTY**

[FPC - 09/04]

(Work performed outside the United States is exempt from the requirements of this Article.)

On a progressive basis of construction, the Subcontractor shall promptly furnish and shall cause any Lower-tier Subcontractor to furnish, in like manner, at the request of JPL, unit prices and descriptive data required by JPL for property record purposes, of fixtures and equipment furnished and installed by the Subcontractor.

#### **PROHIBITION OF SUBCONTRACTOR USE OF PRIVATELY OWNED AIRCRAFT IN SUBCONTRACT PERFORMANCE**

[CT, FPNR&D, FPR&D, T&MC, LH/T&M, FPC, CREI, A - E, RSA - 09/04]

The Subcontractor, its employees, agents and Lower-tier Subcontractors, shall not use privately owned (noncommercial) aircraft in the performance of this Subcontract without prior approval of JPL. Any request for approval to use privately owned aircraft must include a certificate of insurance as evidence that the Subcontractor has in effect Aircraft Liability Insurance coverage of not less than \$5,000,000 for all deaths, injuries, and property damage arising from one accident or occurrence. The Subcontractor shall be required as a condition of JPL's approval to submit an endorsement naming the Institute as an additional insured in such aircraft liability insurance policy. The Subcontractor shall include this provision in any Lower-tier Subcontract involving travel subject to JPL approval or requiring that the Lower-tier Subcontractor utilize a privately owned (noncommercial) aircraft.

#### **PROHIBITION OF SEGREGATED FACILITIES**

[CT, FP\_NR&D, CIS, T&MC, LH/T&M, FPC, CREI, A - E - 09/04] [FAR 52.222-21]

(The following Article is applicable to Subcontracts where FAR 52.222-26, Equal Opportunity is applicable)

Incorporate by reference FAR 52.222-21, Prohibition of Segregated Facilities

#### **PROTECTION OF EXISTING VEGETATION, STRUCTURES, MATERIALS, IMPROVEMENTS, UTILITIES, AND WORK IN PROGRESS**

[T&MC, FPC - 09/04] [FAR 52.236-9 - 04/84]

- (a) The Subcontractor shall preserve and protect all existing vegetation such as trees, shrubs, and grass on or adjacent to the site of work which is not to be removed and which does not unreasonably interfere with the construction work. Care will be taken in removing trees authorized for removal to avoid damage to vegetation to remain in place. Any limbs or branches of trees broken during such operations or by the careless operation of equipment, or by workers, shall be trimmed with a clean cut and painted with an approved tree pruning compound as directed by JPL.
- (b) The Subcontractor shall protect from damage all existing structures, improvements or utilities, the location of which is made known to it, within or outside the working area. Such protection shall include both the exterior and interior and the finish thereof and shall be performed by adequately covering or, with the approval of JPL, by temporary removal. Any damage to such facilities resulting from the Subcontractor's failure to comply with the requirements of this Subcontract or the failure to exercise reasonable care in the performance of the work shall be promptly repaired or replaced with materials, fixtures or equipment of the same kind, quality and size. If the Subcontractor fails or refuses to repair any such damage promptly, JPL may have the necessary work performed and charge the cost thereof to the Subcontractor. Any materials or equipment temporarily removed for protection and not damaged shall be reinstalled.
- (c) The Subcontractor shall at all times protect and preserve all work in progress, including, but not limited to, work performed, materials, supplies and equipment of every description (including property which may be



Government-owned). The protection must be substantial and as placed as to be easily removed for inspection or to facilitate the progress of other work. All reasonable requests of JPL to enclose or specifically protect such property shall be complied with. If, as determined by JPL, materials, equipment, supplies, and work performed are not adequately protected by the Subcontractor, such property may be protected by JPL and the cost thereof may be charged to the Subcontractor or deducted from any payment due it.

### **RELEASE OF INFORMATION**

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A – E, RSA – 03/08]

(This Article does not apply if the Article entitled "Release of Information - Preliminary Engineering Report (PER)" is applicable.)

- (a) The Subcontractor agrees that all information released by the Subcontractor for publicity or promotional purposes (e.g., news and photo releases, exhibit copy, motion picture scripts, and advertising copy) directly related to the Subcontractor's work with and for JPL will be submitted to JPL for review for technical accuracy prior to issuance. (See enclosed form letter JPL 1737, "Release of Information.")
- (b) The Subcontractor agrees to insert this clause including this paragraph in all Lower-tier Subcontracts.

### **REQUIRED NOTICES**

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, RSA – 09/04]

Unless otherwise specified in this Subcontract, any notice which the Subcontractor is required to provide to JPL under any provision of this Subcontract shall be directed to the JPL Subcontracts Manager or the Manager, Acquisition Division, JPL, or their authorized representatives.

### **RESTRICTIONS ON CERTAIN FOREIGN PURCHASES**

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E – 09/04] [FAR 52.225- 13 – 07/00]

Incorporate by reference FAR 52.225- 13, Restrictions on Certain Foreign Purchases.

### **SAFETY AND HEALTH – CONSTRUCTION**

[T&MC, FPC – 12/07] [NFS 1852.223-70 – 04/02]

(This Article is applicable only if the Subcontract involves work either (i) conducted completely or partly on premises owned or controlled by the Government, (ii) that includes construction, alteration or repair of facilities in excess of \$25,000, (iii) regardless of place of performance, that involves hazards that could endanger the public, astronauts and pilots, the NASA workforce (including Subcontractor employees working on NASA Subcontracts) or high value equipment or property and the hazards are not adequately addressed by Occupational Safety and Health (OSHA) or Department of Transportation (DOT) regulations (if applicable) or (iv) when JPL determines that the assessed risk and consequences of a failure to properly manage and control the hazard(s) warrants use of the clause.)

- (a) The Subcontractor shall take safety and occupational health measures as provided in this Article and JPL Form 2885 in performing under this Subcontract and shall, to the extent set forth below, submit a safety plan and a health plan (applicable to the work to be performed under this Subcontract) for JPL's approval. The Subcontractor shall comply with all Federal, State, and local laws applicable to safety and occupational health in effect on the date of this Subcontract and with the safety and occupational health standards, specifications, reporting requirements, and provisions set forth below.
- (b) The Subcontractor shall take or cause to be taken any other safety and occupational health measures JPL may reasonably direct. To the extent that the Subcontractor may be entitled to an equitable adjustment for those measures under the terms and conditions of this Subcontract, the equitable adjustment shall be determined pursuant to the procedures of the Article of this Subcontract entitled "Changes," provided, that no adjustment shall be made under this Safety and Health Article for any change for which an equitable adjustment is expressly provided under any other provision of the Subcontract.
- (c) Standards. The following safety and health standards, specifications, issuances, and reporting requirements are prescribed pursuant to paragraph (a).
  - (1) General Standards and Specifications: the Subcontractor shall use NASA Procedures and Guidelines (NPG) 8715. 3, NASA Safety Manual with Changes Through Change I 6/19/02, dated January 24, 2000, as a general policy guide to establish a safety program to be included in the safety and health plan to be submitted in accordance with paragraph (a) above.

- (2) Nuclear Safety: Radioactive material will be handled in accordance with appropriate Federal, State, local and tribal regulations and requirements, to specifically include those of the State of California, Department of Energy and/or Nuclear Regulatory Commission. Launching of nuclear materials into space shall be done in accordance with National Security Council/Presidential Directive 25, as of May 8, 1996. Chapter 5, Nuclear safety, of NPG 8715.3, NASA Safety manual provides specific additional NASA requirements.
  - (3) Propulsion Safety: The Subcontractor shall comply with all applicable Federal, State, and local requirements applicable to propulsion safety, and the requirements shall be used to establish a propulsion safety program (if applicable) to be included in the safety and health plan to be submitted in accordance with paragraph (a) above.
  - (4) Fire Safety: The Subcontractor shall comply with all applicable Federal, State, and Local requirements pertaining to Fire Protection and Life Safety. NASA STD 8719.11, NASA Safety Standard for Fire Protection and Life Safety, dated December 19, 2000, will be followed to ensure safety of NASA facilities.
  - (5) Ammunition and Explosive Safety: The Subcontractor shall comply with all applicable Federal, State, and Local requirements applicable to ammunition and explosive safety. The requirements of NSS 1740.12 NASA Safety standard for explosives, propellants, and Pyrotechnics, dated August 1993 shall be used to establish a propulsion safety program to be included in the safety and health plan to be submitted in accordance with paragraph (a) above.
  - (6) Pressure Vessel and Pressure System Safety: The Subcontractor shall establish a pressure systems safety and recertification program in accordance with NPD 8710.5, NASA Safety Policy for Pressure vessels and Systems, dated March 17, 1998
  - (7) Any additional safety and health standards, specifications, issuances and reporting requirements set forth in this Subcontract.
- (d) The safety and health plan to be submitted by the Subcontractor pursuant to paragraph (a) above shall implement the requirements of this Article and of the standards and specifications of paragraph (c) of this Article and shall describe the means to be employed by the Subcontractor to monitor and enforce said requirements. The plan shall include the Subcontractor's standards and criteria for imposing safety and health standards upon its Lower-tier Subcontractors and its plans and procedures for monitoring compliance with such standards. A safety and health plan for similar work performed by the Subcontractor on a Federal Subcontract may be submitted for review and approval under this Article.
- (e) Illness, Incident and Injury Experience Reports.
- (1) Reports required by this Article or elsewhere in this Subcontract shall be furnished in three copies unless otherwise specified. Subcontractor shall refer to JPL Form 2885 for detail regarding reporting requirements.
  - (2) The following illness, incident, and injury experience reports are prescribed pursuant to paragraph (e) above:
    - (J) Mishap Reports: The Subcontractor shall furnish JPL mishap reports and respond to JPL requests for mishap reviews. The Subcontractor shall conduct its own mishap investigations consistent with NPD 8621.1H, NASA Mishap and Close-Call Reporting, Investigation, and Recordkeeping Policy, dated October 2, 2002, with the understanding that all references to NASA in that policy shall be interpreted to mean the Subcontractor. The Subcontractor shall utilize the NPD 8621.1, dated June 2, 2000 procedures as guidelines. The Subcontractor shall also report to the JPL Subcontracts Manager any incidents that may have visibility in the press, mission failures, or mission anomalies that will have high JPL or NASA visibility in the press.
    - (K) The Contractor shall furnish such other reports as JPL determines to be related to the Subcontractor's safety and health program and its experiences there under.
- (f)
- (1) JPL may notify the Subcontractor in writing of any noncompliance with this Article and specify corrective actions to be taken. The Subcontractor shall promptly take and report any necessary corrective action.
  - (2) When the JPL Subcontracts Manager becomes aware of noncompliance that may pose a serious or imminent danger to safety and health of the public, astronauts and pilots, the NASA workforce (including Subcontractor employees working on NASA Subcontracts) or high value mission critical equipment or property, the JPL Subcontracts Manager shall notify the Subcontractor orally, and follow with written confirmation. The Subcontractor shall promptly take and report any necessary corrective action. If the Subcontractor fails or refuses to institute prompt corrective action in accordance with subparagraph (g)(1) of

this Article, JPL may invoke the stop work order Article of this Subcontract or any other remedy legally available to the Institute in the event of such failure or refusal.

- (g) The Subcontractor (or Lower-tier Subcontractor or supplier) shall cause the substance of this Article, including this paragraph (g) and any applicable provisions of this Subcontract, with any appropriate changes of designations of the parties, to be inserted in subcontracts of every tier which involve work to which this Article is applicable as specified in the preamble above.
- (h) The Subcontractor agrees that authorized representatives of JPL or the Contracting Officer shall have access to and the right to examine the sites or areas where work under this Subcontract is being performed in order to determine the adequacy of the Subcontractor's safety and health measures under this Article.

#### **SCHEDULE OF PAYMENTS**

[FPC – 09/04]

Within 10 days after receipt of written Notice to Proceed, the Subcontractor shall submit to JPL a detailed breakdown of the total Subcontract price showing values of each principal category and subcategories included therein, including quantities, in such detail and supported by such evidence as to its correctness as JPL may require. This Schedule, when approved by JPL, shall be used as a basis for payments in accordance with the Article entitled "Payments." In applying for payments, the Subcontractor shall submit a statement based upon the JPL-approved Schedule and itemized in such form and supported by such evidence as JPL may require justifying the payment.

#### **SCHEDULES FOR CONSTRUCTION SUBCONTRACTS**

[FPC - 09/04]

- (a) The Subcontractor shall, within five days after work commences on the Subcontract, or within such other period as determined by JPL, prepare and submit to JPL for approval three copies of a practicable schedule showing the order in which the Subcontractor proposes to perform the work, and the dates on which the Subcontractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Subcontractor fails to submit a schedule within the time prescribed, JPL may withhold approval of progress payments until the Subcontractor submits the required schedule.
- (b) The Subcontractor shall enter the actual progress on the chart as directed by JPL, and upon doing so shall immediately deliver three copies of the annotated schedule to JPL. If, in the opinion of JPL, the Subcontractor falls behind the approved schedule, the Subcontractor shall take steps necessary to improve its progress, including those that may be required by JPL, without additional cost to the Institute. In this circumstance, JPL may require the Subcontractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as JPL deems necessary to demonstrate how the approved rate of progress will be regained.
- (c) Failure of the Subcontractor to comply with the requirements of JPL under this Article shall be grounds for a determination by JPL that the Subcontractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the Subcontract. Upon making this determination, JPL may terminate the Subcontractor's right to proceed with the work, or any separable part of it, in accordance with the Article entitled "Default" of this Subcontract.

#### **SIGNS AND ADVERTISEMENTS**

[T&MC, FPC – 09/04]

No signs or advertisements will be allowed on the site unless prior written approval is obtained from JPL.

#### **SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK**

[FPC – 09/04] [FAR 52.236-3 – 04/84]

- (a) The Subcontractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to (i) conditions bearing upon transportation, disposal, handling, and storage of materials, (ii) the availability of labor, water, electric power, and roads, (iii) uncertainties of weather, river stages, tides, or similar physical conditions at the site, (iv) the conformation and conditions of the ground, and (v) the character of equipment and facilities needed preliminary to and during work performance. The Subcontractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of

surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by JPL, as well as from the drawings and specifications made a part of this Subcontract. Any failure of the Subcontractor to take the actions described and acknowledged in this paragraph will not relieve the Subcontractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to JPL.

- (b) JPL assumes no responsibility for any conclusions or interpretations made by the Subcontractor based on the information made available by JPL, nor does JPL assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents or employees before the execution of this Subcontract, unless that understanding or representation is expressly stated in this Subcontract.

#### **SMALL BUSINESS SUBSUBCONTRACTING PLAN**

[A&E, CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI – 09/04] [FAR 52.219-9 – 01/02]

(This Article is applicable if the basic Subcontract or any separate modification exceeds \$500,000 [\$1,000,000 for construction of any public facility], except it does not apply to Subcontracts with small businesses or orders under GSA Subcontracts. Work performed outside the United States is exempt from the requirements of this Article.)

- (a) If there will be any Lower-tier Subcontracting under this Subcontract and the basic or any modification exceeds \$500,000, (\$1,000,000 for construction of any public facility), the Subcontractor agrees to submit for JPL approval a Lower-tier Subcontracting Plan (Plan) that separately addresses Lower-tier Subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBzone small business concerns, small disadvantaged business, and women-owned small business concerns. The Subcontractor further agrees to provide a written update to the Plan for every modification exceeding \$500,000 (\$1,000,000 for construction of a public facility). JPL's approval will be based on the requirements in JPL form 0294 entitled "Requirements for a Subcontracting Plan." The approved Plan and approved updates will be deemed incorporated into this Subcontract.
- (b) If a Plan is required under this Subcontract, SF 294, "Subcontracting Report for Individual Contracts," and SF 295, "Summary Subcontract Report," are deliverables, which must be submitted by the Subcontractor to the JPL Subcontracts Manager in accordance with the instructions on the forms.
- (c) It is understood and agreed that the failure of the Subcontractor to comply in good faith with the Article of this Subcontract entitled "Utilization of Small, Small Disadvantaged, and Women-Owned Small Business Concerns," or with any Plan required to be included in this Subcontract, shall be a material breach of this Subcontract.

## **SMALL BUSINESS SUBSUBCONTRACTING REPORTING**

[A&E, CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI – 09/04] [NFS 1852.219-75 – 05/99]

(This Article is applicable if the basic Subcontract or any separate modification exceeds \$500,000 [\$1,000,000 for construction of any public facility], except it does not apply to Subcontracts with small businesses or orders under GSA Subcontracts. Work performed outside the United States is exempt from the requirements of this Article.)

- (a) The Subcontractor shall submit the Summary Subcontract Report (Standard Form (SF) 295) semiannually for the reporting periods specified in block 4 of the form. All other instructions for SF 295 remain in effect.
- (b) The Subcontractor shall include this clause in all Lower-tier Subcontracts that include the Article titled "Small Business Subcontracting Plan" (FAR 52.219-9)

## **SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION**

[T&MC, FPC – 04/00] [FAR 52.236-21 – 02/97]

- (a) The Subcontractor shall keep on the work site a copy of the drawings and specifications and shall at all times give JPL access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to JPL, which shall promptly make a determination in writing. Any adjustment by the Subcontractor without such a determination shall be at its own risk and expense. JPL shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.
- (b) Whenever in the specifications or upon the drawings the words "directed," "required," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that the "direction," "requirement," "order," "designation," or "prescription," of JPL is intended and similarly the words "approved," "acceptable," "satisfactory," or words of like import shall mean "approved by," or "acceptable to," or "satisfactory to" JPL, unless otherwise expressly stated.
- (c) Where "as shown," "as indicated," "as detailed," or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this Subcontract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place," that is "furnished and installed."
- (d) Shop drawings means drawings, submitted to JPL by the Subcontractor, Lower-tier Subcontractor, or any lower tier subcontractor pursuant to a construction Subcontract, showing in detail (i) the proposed fabrication and assembly of structural elements, and (ii) the installation (i.e., fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Subcontractor to explain in detail specific portions of the work required by the Subcontract. JPL may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this Subcontract.
- (e) If this Subcontract requires shop drawings, the Subcontractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with Subcontract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to JPL without evidence of the Subcontractor's approval may be returned for resubmission. JPL will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate JPL's reasons therefore. Any work done before such approval shall be at the Subcontractor's risk. Approval by JPL shall not relieve the Subcontractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this Subcontract, except with respect to variations described and approved in accordance with (f) below.
- (f) If shop drawings show variations from the Subcontract requirements, the Subcontractor shall describe such variations in writing, separate from the drawings, at the time of submission. If JPL approves any such variation, JPL shall issue an appropriate Subcontract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.
- (g) The Subcontractor shall submit to JPL for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the JPL and one set will be returned to the Subcontractor.

## **SUBCONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION**

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E, RSA – 09/04] [FAR 22.305 - 7/95; 52.222-4 - 09/00]

(Work performed outside the United States is exempt from the requirements of this Article.)

- (a) This provision is not applicable to Subcontracts for supplies, materials, or articles ordinarily available in the open market, Subcontracts for transportation by land, air, or water, or for the transmission of intelligence, Subcontracts of \$100,000 or less, Subcontracts to be performed solely within a foreign country or within a territory under United States jurisdiction other than a state, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Island, and Johnson Island, and Subcontracts (or portions of Subcontracts) for supplies in connection with which any required services are merely incidental to the Subcontract and do not require substantial employment of laborers or mechanics, exempt under regulations of the Secretary of Labor (29 CFR 5.15), Subcontracts requiring work to be done solely in accordance with the Walsh-Healey Public Contract Act, and Subcontracts for commercial items.
- (b) FAR clause 52.222-4 (Sept 2000) is hereby incorporated by reference in total, except that:
  - (1) The words "JPL Subcontracts Manager or JPL's Contracting Officer" shall be substituted for the words "Contracting Officer" wherever they appear;
  - (2) The word "Subcontractor" shall be substituted for the words "Prime Contractor" wherever they appear; and
  - (3) The words "with JPL" shall be substituted for the words "Federal Contract with the same Prime Contractor" wherever they appear.

## **SUBCONTRACTOR AND LOWER-TIER SUBCONTRACTOR COST OR PRICING DATA, OR INFORMATION OTHER THAN COST OR PRICING DATA AND PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA**

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, A - E CREI – 09/04] [FAR 15.403-4 - 10/06; 52.215-11 - 10/97; 52.215-12 - 10/97; 52.215-13 - 10/97; 52.215-20 - 10/97; 52.215-21 - 10/97]

(This Article is applicable if either the basic Subcontract or any modification exceeds \$650,000.)

### **(a) Subcontractor Cost or Pricing Data.**

- (1) Whenever the negotiated price of the basic Subcontract, or the negotiated price of any change, or other modification to this Subcontract is expected to exceed \$650,000, the Subcontractor agrees to furnish the Institute certified cost or pricing data, unless a waiver applies or a determination is made that an exception applies (the price is based on adequate price competition, prices set by law or regulation, or the Subcontract is for a commercial item). Whenever certified cost or pricing data are required, the Subcontractor agrees to furnish the data in the format requested by JPL or if JPL does not so specify, per Table 15-2 of FAR 15.408 and agrees to submit the JPL certificate form JPL 2496 or equivalent as soon as practicable after agreement on price but before award.

### **(2) Exceptions to Cost or Pricing Data.**

#### **(A)**

- (i) Basic Subcontracts. In lieu of submitting cost or pricing data for the basic Subcontract, offerors may submit a written request for exception by submitting the information described under paragraph (B), below.
- (ii) Subcontract Modifications. In lieu of submitting cost or pricing data for modifications under this Subcontract, for price adjustments expected to exceed \$650,000 on the date of the agreement on price or the date of the award, whichever is later, the Subcontractor may submit a written request for exception by submitting the information described under paragraph (B), below.
- (iii) JPL may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

#### **(B) The relevant part of the following information is to be submitted when requesting an exception:**

- (i) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.



- (ii) For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include:
      - a. For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.
      - b. For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.
      - c. For items included on an active Federal Supply Service Multiple Award Schedule or any other Federal Government Subcontract, proof that an exception has been granted for the schedule item.
    - (iii) Information on modifications of Subcontracts or Lower-tier Subcontracts for commercial items. If (i) the original Subcontract or Lower-tier Subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition, or prices set by law or regulation, or was a Subcontract or Lower-tier Subcontract for a commercial item; and (ii) the modification (to the Subcontract or Lower-tier Subcontract) is not exempted based on one of these exceptions, then the Subcontractor may provide information to establish that the modification would not change the Subcontract or Lower-tier Subcontract from a Subcontract or Lower-tier Subcontract for the acquisition of a commercial item to a Subcontract or Lower-tier Subcontract for the acquisition of an item other than a commercial item.
  - (C) The Offeror/Subcontractor grants JPL or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Offeror's/Subcontractor's determination of the prices to be offered in the catalog or marketplace.
- (b) Lower-tier Subcontractor Cost or Pricing Data.
- (1) Before awarding any Lower-tier Subcontract expected to exceed \$650,000 when entered into, or before pricing any Lower-tier Subcontract modification involving a pricing adjustment expected to exceed \$650,000, the Subcontractor shall require the Lower-tier Subcontract to submit cost or pricing data (actually or by specific identification in writing), unless the Lower-tier Subcontract or modification is eligible for an exception listed in paragraph (a), above.
  - (2) The requirement for obtaining certified cost or pricing data with respect to any Lower-tier Subcontract change or other modification does not apply to any Lower-tier Subcontract change or modification, at any tier, where this Subcontract is a firm fixed-price or firm fixed-price with escalation Subcontract unless such change or other modification results from a Subcontract change or other modification to this Subcontract, nor does it apply to a Lower-tier Subcontract change or other modification, at any tier, where this Subcontract is not firm fixed-price or firm fixed-price with escalation, unless the price for such change or modification becomes reimbursable under this Subcontract.
  - (3) The Subcontractor shall require the Lower-tier Subcontractor to certify in substantially the form prescribed in FAR Part 15, and any corresponding implementing or supplementing provisions in the NFS, that, to the best of its knowledge and belief, the data submitted under subparagraph (b)(1) above were accurate, complete, and current as of the date of agreement on the negotiated price of the Lower-tier Subcontract or Lower-tier Subcontract modification.
  - (4) In each Lower-tier Subcontract that exceeds \$650,000 when entered into, the Subcontractor shall insert either:
    - (A) The substance of this Article, including this paragraph (4), if paragraph (b)(1) above requires submission of cost or pricing data for the Lower-tier Subcontract; or

(B) The substance of the clause at FAR 52.215-13, "Subcontractor Cost or Pricing Data - Modifications," including any corresponding implementing or supplementing provisions in the NFS.

(c) Price Reduction for Defective Cost or Pricing Data.

- (1) If any price, including profit or fee, negotiated in connection with this Subcontract, or any cost reimbursable under this Subcontract, was increased by any significant amount because (i) the Subcontractor or a Lower-tier Subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (ii) a Lower-tier Subcontractor or prospective Lower-tier Subcontractor furnished the Subcontractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (iii) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the Subcontract shall be modified to reflect the reduction.
- (2) Any reduction in the Subcontract price under paragraph (1) above due to defective data from a prospective Lower-tier Subcontract that was not subsequently awarded the Lower-tier Subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (i) the actual Lower-tier Subcontract or (ii) the actual cost to the Subcontractor, if there was no Lower-tier Subcontract, was less than the prospective Lower-tier Subcontract cost estimate submitted by the Subcontractor; provided, that the actual Lower-tier Subcontract price was not itself affected by defective cost or pricing data.

(3)

- (A) If the Contracting Officer determines under paragraph (1) of this Article that a price or cost reduction should be made, the Subcontractor agrees not to raise the following matters as a defense:
  - (i) The Subcontractor or Lower-tier Subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the Subcontract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
  - (ii) The Institute should have known that the cost or pricing data in issue were defective even though the Subcontractor or Lower-tier Subcontractor took no affirmative action to bring the character of the data to the attention of JPL.
  - (iii) The Subcontract was based on an agreement about the total cost of the Subcontract and there was no agreement about the cost of each item procured under the Subcontract.
  - (iv) The Subcontractor or Lower-tier Subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(B)

- (i) Except as prohibited by subdivision (c)(3)(B)(ii) of this Article, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a Subcontract price reduction if:
    - a. The Subcontractor certifies to the Contracting Officer that, to the best of the Subcontractor's knowledge and belief, the Subcontractor is entitled to the offset in the amount requested; and
    - b. The Subcontractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data and that the data were not submitted before such date.
  - (ii) An offset shall not be allowed if:
    - a. The understated data were known by the Subcontractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data or
    - b. The Government proves that the facts demonstrate that the Subcontract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.
- (d) If any reduction in the Subcontract price under this Article reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Subcontractor shall be liable to and shall indemnify the Institute for costs incurred by the Institute involved in repayments to the Government resulting from the Subcontractor's defective pricing including:

- (1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Subcontractor to the date the Government is repaid by the Institute at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
- (2) A penalty equal to the amount of the overpayment, if the Subcontractor or Lower-tier Subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or non-current.

#### **SUBCONTRACTOR RECRUITING ACTIVITY**

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC – 09/04]

(Work performed outside the United States is exempt from the requirements of this Article.)

Except as may be specifically authorized by JPL in writing, during the performance of this Subcontract the Subcontractor shall refrain from engaging in any activity related to employment recruiting on any of the premises of JPL.

#### **SUBCONTRACT TERMINATION – DEBARMENT**

[T&MC, FPC – 09/04] [FAR 52.222-12 – 02/88]

(Work performed outside the United States is exempt from the requirements of this Article.)

A breach of the Subcontract Articles entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act - Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with Copeland Act Requirements," "Subcontracts (Labor Standards)," "Compliance with Davis-Bacon and Related Act Regulations," or "Certification of Eligibility," may be grounds for termination of the Subcontract, and for debarment as a Subcontractor as provided in 29 CFR 5.12.

#### **SUPERINTENDENCE BY THE SUBCONTRACTOR**

[T&MC, FPC – 09/04] [FAR 52.236-6 - 04/84]

At all times during performance of this Subcontract and until the work is completed and accepted, the Subcontractor shall directly superintend the work or assign and have on the work a competent superintendent who is satisfactory to JPL and has authority to act for the Subcontractor. The Subcontractor shall submit the name of this representative to JPL prior to commencement of site work.

#### **SUSPENSION OF WORK**

[T&MC, FPC – 09/04] [FAR 52.242-14 - 04/84]

- (a) JPL may order the Subcontractor, in writing, to suspend, delay, or interrupt all or any part of the work of this Subcontract for the period of time that JPL determines appropriate for the convenience of JPL or the Government.
- (b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (i) by an act of JPL in the administration of this Subcontract, or (ii) by JPL's failure to act within the time specified in this Subcontract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this Subcontract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the Subcontract modified in writing accordingly. However, no adjustment shall be made under this Article for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Subcontractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this Subcontract.
- (c) A claim under this Article shall not be allowed (i) for any costs incurred more than 20 days before the Subcontractor shall have notified JPL in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (ii) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the Subcontract.

## **TECHNICAL DIRECTION**

[FP-NR&D, LH/T&M, T&MC, FPC, A - E, FP - R&D, RSA - 09/04] [NFS 1852.242-70 - 09/93]

- (a) Performance of the work under this Subcontract is subject to the written technical direction of the Contract Technical Manager (CTM). "Technical direction" means a directive to the Subcontractor that approves approaches, solutions, designs, or refinements; fills in details or otherwise completes the general description of work or documentation items; shifts emphasis among work areas or tasks; or furnishes similar instruction to the Subcontractor. Technical direction includes requiring studies and pursuit of certain lines of inquiry regarding matters within the general tasks and requirements of this Subcontract.
- (b) The CTM does not have the authority to, and shall not, issue any instruction purporting to be technical direction that--
  - (1) Constitutes an assignment of additional work outside the statement of work;
  - (2) Constitutes a change as defined in the changes clause;
  - (3) Constitutes a basis for any increase or decrease in the total estimated Subcontract cost, the fixed fee (if any), or the time required for Subcontract performance;
  - (4) Changes any of the expressed terms, conditions, or specifications of the Subcontract; or
  - (5) Interferes with the Subcontractor's rights to perform the terms and conditions of the Subcontract.
- (c) All technical direction shall be issued in writing by the CTM.
- (d) The Subcontractor shall proceed promptly with the performance of technical direction duly issued by the CTM in the manner prescribed by this clause and within the CTM's authority. If, in the Subcontractor's opinion, any instruction or direction by the CTM falls within any of the categories defined in paragraph (b) of this clause, the Subcontractor shall not proceed but shall notify the JPL Subcontracts Manager in writing within 5 working days after receiving it and shall request the Subcontracts Manager to take action as described in this clause. Upon receiving this notification, the Subcontracts Manager shall either issue an appropriate Subcontract modification within a reasonable time or advise the Subcontractor in writing within 30 days that the instruction or direction is--
  - (1) Rescinded in its entirety; or
  - (2) Within the requirements of the Subcontract and does not constitute a change under the changes clause of the Subcontract, and that the Subcontractor should proceed promptly with its performance.
- (e) Any action(s) taken by the Subcontractor in response to any direction given by any person other than the Subcontracts Manager or the CTM shall be at the Subcontractor's risk.

## **TEMPORARY UTILITIES AND UTILITY TIE-INS**

[T&MC, FPC - 09/04]

- (a) Water. All reasonably required amounts of water will be made available to the Subcontractor by JPL from existing water system outlets and supplies. Any pumping facilities, temporary connections, or piping required to transmit the water shall be furnished by the Subcontractor, subject to the approval of JPL, and shall be removed in a satisfactory manner, at the Subcontractor's expense, when the job is completed.
- (b) Electricity.
  - (1) All reasonable electric current required by the Subcontractor shall be furnished by JPL. All temporary connections for electricity shall be subject to the approval of JPL.
  - (2) All temporary lines will be furnished, installed, connected and maintained by the Subcontractor in a workmanlike manner satisfactory to JPL and shall be removed by the Subcontractor in like manner at its expense prior to completion of the construction.
  - (3) The Subcontractor shall furnish engine-driven welders for required welding power.
- (c) Telephone Service. Unless otherwise provided in this Subcontract, telephone service shall be provided by the Subcontractor, or, where available, JPL pay telephones may be used.
- (d) Utility Tie-Ins.
  - (1) All tie-ins, modifications, or moving of JPL utilities such as air, power, fire sprinkler systems, water, air-conditioning systems, etc., must be scheduled through JPL and shall be done on Saturdays or Sundays, if required, at no additional cost to JPL.

- (2) Unless otherwise specified in this Subcontract, the Subcontractor shall submit schedules to JPL at least 10 calendar days in advance of any building utility outages and off-hour work, and JPL will inform the Subcontractor within seven calendar days of receipt of notification of approval or disapproval of such schedules.
- (e) Water and Utility Usage. The Subcontractor shall provide continuous surveillance of water flow or other utility usage to prevent waste or damage to JPL property.

#### **TERMINATION FOR CONVENIENCE – CONSTRUCTION**

[FPC – 09/04] [FAR 52.249-2, ALT 1 – 09/96]

- (a) JPL may terminate performance of work under this Subcontract in whole or, from time to time, in part if JPL determines that a termination is in the best interest of the Institute. JPL shall terminate by delivering to the Subcontractor a Notice of Termination specifying the extent of termination and the effective date.
- (b) After receipt of a Notice of Termination, and except as directed by JPL, the Subcontractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Article:
  - (1) Stop work as specified in the notice.
  - (2) Place no further Subcontracts or orders (referred to as Lower-tier Subcontracts in this Article) for materials, services, or facilities, except as necessary to complete the continued portion of the Subcontract.
  - (3) Terminate all Lower-tier Subcontracts to the extent they relate to the work terminated.
  - (4) Assign to JPL, as directed by JPL, all right, title, and interest of the Subcontractor under the Lower-tier Subcontracts terminated, in which case JPL shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
  - (5) With approval or ratification to the extent required by JPL, settle all outstanding liabilities and termination settlement proposals arising from the termination of Lower-tier Subcontracts; the approval or ratification will be final for purposes of this Article.
  - (6) As directed by JPL, transfer to the Government title and deliver to JPL (i) the fabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the Subcontract had been completed, would be required to be furnished to JPL.
  - (7) Complete performance of the work not terminated.
  - (8) Take any action that may be necessary, or that JPL may direct, for the protection and preservation of the property related to this Subcontract that is in the possession of the Subcontractor and in which the Government has or may acquire an interest.
  - (9) Use its best efforts to sell, as directed or authorized by JPL, any property of the types referred to in subparagraph (6) above; provided, however, that the Subcontractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, JPL. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by JPL under this Subcontract, credited to the price or cost of the work, or paid in any other manner directed by JPL.
- (c) The Subcontractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination unless extended in writing by the Contracting Officer upon written request of the Subcontractor within this 120 day period.
- (d) After expiration of the plant clearance period as defined in Subpart 45.6 of the FAR and any corresponding implementing or supplementing provisions in the NFS, in effect on the date of this Subcontract, the Subcontractor may submit to JPL a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by JPL. The Subcontractor may request JPL to remove those items or enter into an agreement for their storage. Within 15 days, JPL will accept those items and remove them or enter into a storage agreement. JPL may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (e) After termination, the Subcontractor shall submit a final termination settlement proposal to JPL in the form and with the certification prescribed by JPL. The Subcontractor shall submit the proposal promptly, but no later than six months from the effective date of termination, unless extended in writing by JPL upon written request of the

Subcontractor within this six- month period. However, if JPL determines that the facts justify it, a termination settlement proposal may be received and acted on after six months or any extension. If the Subcontractor fails to submit the proposal within the time allowed, JPL may determine, on the basis of information available, the amount, if any, due the Subcontractor because of the termination and shall pay the amount determined.

- (f) Subject to paragraph (e) above, the Subcontractor and JPL may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) below, exclusive of costs shown in subparagraph (g)(3) below, may not exceed the total Subcontract price as reduced by (i) the amount of payments previously made and (ii) the Subcontract price of work not terminated. The Subcontract shall be amended, and the Subcontractor paid the agreed amount. Paragraph (g) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- (g) If the Subcontractor and JPL fail to agree on the whole amount to be paid the Subcontractor because of the termination of work, JPL shall pay the Subcontractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (f) above:
  - (1) For Subcontract work performed before the effective date of termination, the total (without duplication of any items) of:
    - (A) The cost of this work;
    - (B) The cost of settling and paying termination settlement proposals under terminated Lower-tier Subcontracts that are properly chargeable to the terminated portion of the Subcontract if not included in subparagraph (A) above; and
    - (C) A sum, as profit on (A) above, determined by JPL under FAR 49.202 and any corresponding implementing or supplementing provisions in the NFS, in effect on the date of this Subcontract, to be fair and reasonable; however, if it appears that the Subcontractor would have sustained a loss on the entire Subcontract had it been completed, JPL shall allow no profit under this subparagraph (C) and shall reduce the settlement to reflect the indicated rate of loss.
  - (2) The reasonable costs of settlement of the work terminated, including:
    - (A) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
    - (B) The termination and settlement of Lower-tier Subcontracts (excluding the amounts of such settlements); and
    - (C) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- (h) Except for normal spoilage, and except to the extent that JPL or the Government expressly assumed the risk of loss, JPL shall exclude from the amounts payable to the Subcontractor under paragraph (g) above, the fair value, as determined by JPL, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to JPL or to a buyer.
- (i) The cost principles and procedures of Part 31 of the FAR and any corresponding implementing or supplementing provisions in the NFS, in effect on the date of this Subcontract, shall govern all costs claimed, agreed to, or determined under this Article.
- (j) In arriving at the amount due the Subcontractor under this Article, there shall be deducted:
  - (1) All non-liquidated advance or other payments to the Subcontractor under the terminated portion of this Subcontract;
  - (2) Any claim which JPL has against the Subcontractor under this Subcontract; and
  - (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Subcontractor or sold under the provisions of this Article and not recovered by or credited to JPL.
- (k) If the termination is partial, the Subcontractor may file a proposal with JPL for an equitable adjustment of the price(s) of the continued portion of the Subcontract. JPL shall make any equitable adjustment agreed upon. Any proposal by the Subcontractor for an equitable adjustment under this Article shall be requested within 90 days from the effective date of termination unless extended in writing by JPL.
- (l)



- (1) JPL may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Subcontractor for the terminated portion of the Subcontract, if JPL believes the total of these payments will not exceed the amount to which the Subcontractor will be entitled.
- (2) If the total payments exceed the amount finally determined to be due, the Subcontractor shall repay the excess to JPL upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Subcontractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Subcontractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by JPL because of the circumstances.
- (m) Unless otherwise provided in this Subcontract or by statute, the Subcontractor shall maintain all records and documents relating to the terminated portion of this Subcontract for three years after final settlement. This includes all books and other evidence bearing on the Subcontractor's costs and expenses under this Subcontract. The Subcontractor shall make these records and documents available to JPL and the Government, at the Subcontractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

#### **TOXIC CHEMICAL RELEASE REPORTING**

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E, RSA - 09/04] [FAR 52.223-14 - 10/00]

(This Article is applicable to all Subcontracts where the value of the Subcontract and all options at the time of award is expected to exceed \$100,000.)

By entering into this Subcontract, the Subcontractor agrees to abide by and accept all of the Terms and Conditions found in the Federal Acquisition Regulations (FAR) at 52.223-14.

#### **TRANSFER OF TECHNICAL DATA UNDER SPACE STATION INTERNATIONAL AGREEMENTS**

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E - 09/04] [NFS 1852.227-87 - 04/89]

(This Article applies to Subcontracts and Lower-tier Subcontracts in support of Space Station program activities that may involve transfer of technical data subject to the International Traffic in Arms Regulations, 22 CFR parts 120 through 130, or the Export Administration Regulations (EAR), 15 CFR PARTS 730-799 in accordance with the NASA Export Control Program.)

- (a) In the cooperative Space Station Freedom Program, NASA has the authority to provide to the international partners all information necessary to implement the multilateral Space Station Intergovernmental Agreement and the Space Station Memoranda of Understanding. NASA is committed under these Space Station agreements to provide its international Space Station partners with certain technical data that are subject to the U.S. export control laws and regulations. NASA will have obtained any necessary approvals from the Department of State for the transfer of any such technical data. Space Station Subcontractors, acting as agents of NASA under the specific written direction of the Contracting Officer, or designated representative, require no other separate approval under the International Traffic in Arms Regulations (ITAR).
- (b) The Subcontractor agrees, when specifically directed in writing by the JPL Subcontracts Manager or an authorized JPL representative under this Subcontract, acting upon the written direction of the NASA Contracting Officer or designated representative, to transfer identified technical data to a named foreign recipient, in the manner directed. No export control marking should be affixed to the data unless so directed. If directed, the text of the marking to be affixed will be furnished by NASA through the JPL Subcontracts Manager or an authorized JPL representative under this Subcontract.
- (c) It should be emphasized that the transfer is limited solely to those technical data which NASA specifically identifies and directs the Subcontractor to transfer in accordance with paragraph (b), above, and that all other transfers of technical data to foreign entities are subject to the requirements of the U.S. export control laws and regulations.
- (d) Nothing contained in this Article affects the allocation of technical data rights between NASA and the Subcontractor or any Lower-tier Subcontracts as set forth in the "Rights in Data" Article of this Subcontract, nor the protection of any proprietary technical data that may be available to the Subcontractor or any Lower-tier Subcontractor under that Article.
- (e) The Subcontractor agrees to include this Article, including this paragraph (e), in all Lower-tier Subcontracts hereunder, appropriately modified to reflect the relationship of the parties.

## UNION DATA FOR ON-SITE SUBCONTRACTORS

[FPC – 09/04]

(This Article applies to any work at a JPL-controlled facility. Work performed outside the United States is exempt from the requirements of this Article.)

The Subcontractor shall provide JPL-requested union information, including union information pertaining to its Lower-tier Subcontracts, if any, on the "Request for Union Data Regarding On-Site Contractors and Their Subcontractors," set forth below. A copy of this form (sample shown below), filled in, shall be returned to the cognizant Subcontracts Manager's attention. Any changes in the data, such as the addition of a new union Lower-tier Subcontractor, shall be provided to JPL through timely resubmission of the following form:

### REQUEST FOR UNION DATA REGARDING ON-SITE SUBCONTRACTORS AND THEIR LOWER-TIER SUBCONTRACTORS

1. Date:
2. Subcontract number:
3. Scheduled Subcontract completion date:
4. Subcontractor name:
5. Total number of on-site personnel:
6. Cognizant Subcontracts Manager:
7. Lower-tier Subcontractors under this Subcontract with union personnel working on-site at JPL-controlled facilities.

Number of Lower-tier Subcontractor Personnel at JPL Site:

- |    | Lower-tier Subcontractor  | Total Personnel | No. of Union Personnel |
|----|---|-----------------|------------------------|
| 8. | Brief description of scope of work and location of work site sufficient to locate the union Subcontract and Lower-tier Subcontract workers. |                 |                        |

- |    |    |  |                     |
|----|----|--|---------------------|
| 9. | a. | Local union name:  | Local No. (If any): |
|    | b. | Number of on-site Subcontractor/ Lower-tier Subcontractor personnel represented:   |                     |
|    | c. | Name, phone number and address of business agent representing the local union:   |                     |
|    |    | (1) Name:  |                     |
|    |    | (2) Phone:   |                     |
|    |    | (3) Address:   |                     |
|    | d. | Expiration date of labor agreement:  |                     |
|    | e. | (1) If applicable, the employer association responsible for negotiating each agreement for Subcontractor/ Lower-tier Subcontractor:            |                     |
|    |    | (2) If applicable, the names of Subcontractor's/ Lower-tier Subcontractor's local employer representatives who take part in such negotiations: |                     |

10. Name, phone number and address of the Subcontractor's Lower-tier Subcontractor's representative who is responsible for handling labor relations/human resources issues:

- a. Name:
- b. Phone:
- c. Address:

(Note: For items 8, 9, and 10, provide for each union and also for each on-site Lower-tier Subcontract, as applicable.)

## USE AND POSSESSION PRIOR TO COMPLETION

[FPC – 09/04] [FAR 52.236-11 - 04/84]

- (a) JPL shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, JPL shall furnish the Subcontractor a list of items of work remaining to be performed or corrected on those portions of the work that JPL intends to take possession of or use. However, failure of JPL to list any item of work shall not relieve the Subcontractor of responsibility for complying with the terms of the Subcontract. JPL's possession or use shall not be deemed an acceptance of any work under the Subcontract.
- (b) While JPL has such possession or use, the Subcontractor shall be relieved of the responsibility for the loss of or damage to the work resulting from JPL's possession or use, notwithstanding the terms of the Article in this

Subcontract entitled "Permits and Responsibilities." If prior possession or use by JPL delays the progress of the work or causes additional expense to the Subcontractor, an equitable adjustment shall be made in the Subcontract price or the time of completion, and the Subcontract shall be modified in writing accordingly.

#### **USE OF RURAL AREA SMALL BUSINESSES**

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, RSA – 09/04] [NFS 1852.219-74 – 09/90]

(Work performed outside the United States is exempt from the requirements of this Article.)

Incorporate by reference NFS 1852.219-74, Use of Rural Area Small Businesses.

#### **UTILIZATION OF SMALL BUSINESS CONCERNS**

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, RSA – 09/04] [FAR 52.219-8 – 10/00]

(This Article is applicable when the Subcontract amount is expected to be over \$100,000, unless (i) a personal services Subcontract is contemplated, (ii) a commercial items or services Subcontract, or (iii) the Subcontract together with all its Lower-tier Subcontracts is to be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.)

Incorporate by reference FAR 52.219-8, Utilization of Small Business Concerns.

#### **WARRANTY OF CONSTRUCTION**

[T&MC, FPC – 09/04] [FAR 52.246-21 – 03/94]

- (a) In addition to any other warranties in this Subcontract, the Subcontractor warrants, except as provided in paragraph (i) of this Article, that work performed under this Subcontract conforms to the Subcontract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Subcontractor or any Lower-tier Subcontractor or supplier at any tier.
- (b) This warranty shall continue for a period of one year from the date of final acceptance of the work. If JPL takes possession of any part of the work before final acceptance, this warranty shall continue for a period of one year from the date JPL takes possession.
- (c) The Subcontractor shall remedy at the Subcontractor's expense any failure to conform, or any defect. In addition, the Subcontractor shall remedy at the Subcontractor's expense any damage to Institute or Government owned or controlled real or personal property, when that damage is the result of:
  - (1) The Subcontractor's failure to conform to Subcontract requirements; or
  - (2) Any defect of equipment, material, workmanship, or design furnished.
- (d) The Subcontractor shall restore any work damaged in fulfilling the terms and conditions of this Article. The Subcontractor's warranty with respect to work repaired or replaced will run for one year from the date of repair or replacement.
- (e) JPL shall notify the Subcontractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.
- (f) If the Subcontractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, JPL shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Subcontractor's expense.
- (g) With respect to all warranties, express or implied, from Lower-tier Subcontractors, manufacturers, or suppliers for work performed and materials furnished under this Subcontract, the Subcontractor shall:
  - (1) Obtain all warranties that would be given in normal commercial practice;
  - (2) Require all warranties to be executed, in writing, for the benefit of JPL or the Government, if directed by JPL; and
  - (3) Enforce all warranties for the benefit of JPL or the Government, if directed by JPL.
- (h) In the event the Subcontractor's warranty under paragraph (b) of this Article has expired, JPL or the Government may bring suit at its expense to enforce a Lower-tier Subcontractor's, manufacturers, or supplier's warranty.
- (i) Unless a defect is caused by the negligence of the Subcontractor or Lower-tier Subcontractor or supplier at any tier, the Subcontractor shall not be liable for the repair of any defects of material or design furnished by JPL nor for the repair of any damage that results from any defect in JPL-furnished material or design.

- (j) This warranty shall not limit JPL's rights under the "Inspection of Construction" Article of this Subcontract with respect to latent defects, gross mistakes, or fraud.
- (k) Defects in design or manufacture of equipment, specified by JPL on a "brand name and model" basis, shall not be included in this warranty. In this event, the Subcontractor shall require any Lower-tier Subcontractors, manufacturers, or suppliers thereof to execute their warranties in writing directly to the Institute.

#### **WITHHOLDING OF FUNDS**

[FPC – 09/04] [FAR 52.222-7 – 02/88]

The Institute shall, upon its own action or upon written request of the Contracting Officer or an authorized representative of the Department of Labor, withhold or cause to be withheld from the Subcontractor under this Subcontract or any other Subcontract with the same Subcontractor, or any other Federally assisted Subcontract subject to Davis-Bacon prevailing wage requirements, which is held by the same Subcontractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Subcontractor or any Lower-tier Subcontractor the full amount of wages required by the Subcontract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the Subcontract, the Institute may, after written notice to the Subcontractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

#### **WORKING HOURS AND SPECIAL WORK DAYS**

[T&MC, FPC – 09/04]

- (a) The Subcontract price is based on working whatever schedule may be necessary to complete the work within the prescribed time.
- (b) No work shall be performed on Saturdays, Sundays, or holidays recognized by JPL without prior notification to and approval by JPL, which notification shall be not less than 48 hours.



**Jet Propulsion Laboratory**  
California Institute of Technology  
4800 Oak Grove Drive  
Pasadena, California 91109-8099  
(818) 354-4321

## **RELEASE OF INFORMATION**

This Subcontract with the Jet Propulsion Laboratory (JPL) constitutes a Lower-tier Subcontract under a prime contract between the California Institute of Technology and the National Aeronautics and Space Administration (NASA). It is NASA's policy to provide the widest practical dissemination of information on all of its activities. Since 90% of NASA's research and development effort is performed by private industry, Subcontractors and Lower-tier Subcontractors have played a large role in this process.

In accordance with this policy, the Subcontractor may want to issue press releases or plan publicity and advertising from time to time, and the Subcontractor will be expected to respond to queries from information media.

Close coordination in all of these matters is required, and JPL requires that all materials (e.g., news and photo releases, exhibit copy, motion picture scripts, and advertising copy) directly related to the Subcontractor's work with and for JPL be reviewed by JPL for technical accuracy prior to issuance or use.

To expedite this review, the Subcontractor shall send the materials to the JPL Institutional Communications Office, mail stop 186-120, stating the Subcontractor's deadlines and referencing this Subcontract number.

In the event this Subcontract is a cost-reimbursement type Subcontract, review by JPL shall not constitute approval for reimbursement of expenditures made in connection with publicity or advertising releases. Any such expenditure remains subject to applicable cost principles.

Nothing contained herein shall be deemed to change existing requirements relating to the release of classified information.

**Jet Propulsion Laboratory**  
California Institute of Technology  
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## **NOTIFICATION TO PROSPECTIVE SUBCONTRACTORS OF JPL'S ETHICS POLICIES AND ANTI-KICKBACK HOT LINE**

JPL is committed to conducting its business in accordance with the highest standards of ethics and integrity. In this regard, we have an on-going orientation and training program to assure that every JPL employee is aware of this commitment and their individual responsibility for compliance. We must rely on the personal integrity of our employees and the integrity and cooperation of our suppliers and Subcontractors to make sure that these high standards are maintained.

The policies that implement our standards of business conduct state clearly that no employee may solicit or accept any "kickback," gift, gratuity, entertainment, compensation, or favors of any kind from any supplier/Subcontractor or prospective supplier/Subcontractor to JPL. Our policies make it clear that these standards not only apply to procurement personnel but also to employees in all functions and at all levels.

The purpose of this letter is to make sure that you and your employees are aware of our policies, and that together we can achieve and maintain excellence in the conduct of our business relationships.

In the unlikely event that any JPL employee ever attempts to solicit a "kickback," please notify us immediately. JPL has established an Anti-Kickback Hot Line number, **(818) 354-9999**. Please feel free to call this number collect. The information you provide will be handled with confidentiality, investigated thoroughly, and appropriate action taken.

Thank you for your cooperation and support in this important matter.



## Certifications

*(NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.)*

### **I. CERTIFICATION OF NONSEGREGATED FACILITIES**

- (a) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise.
- (b) By the submission of an offer, the offeror certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The offeror agrees that a breach of this certification is a violation of the Equal Opportunity clause in the Subcontract.
- (c) By submission of the offer, the offeror further agrees that (except where it has obtained identical certifications from proposed Lower-tier Subcontractors for specific time periods) it will:
  - (1) Obtain identical certifications from proposed Lower-tier Subcontractors before the award of Lower-tier Subcontracts under which the Lower-tier Subcontractor will be subject to the Equal Opportunity clause;
  - (2) Retain such certifications in its files; and
  - (3) Forward this certification and the following notice to the proposed Lower-tier Subcontractors:

#### **NOTICE TO PROSPECTIVE LOWER-TIER SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATION OF NONSEGREGATED FACILITIES**

A Certificate of Non-segregated Facilities must be submitted before the award of a Lower-tier Subcontract under which the Lower-tier Subcontractor will be subject to the Equal Opportunity clause. The certification may be submitted either for each Lower-tier Subcontractor for all Lower-tier Subcontracts during a period (i.e., quarterly, semi-annually, or annually).

- (d) By commencing performance of the Subcontract work, the selected Subcontractor certifies to the Non-segregated Facilities provisions above.

### **II. CERTIFICATION OF ANTI-KICKBACK COMPLIANCE**

(A Certification of Anti-Kickback Compliance must be submitted prior to award.)

By submission of an offer, the offeror certifies that it has read the General Provision entitled "Anti-Kickback Procedures," contained in the solicitation and that neither it nor any of its employees has performed or participated in any prohibited actions, as defined in that provision, relating to the award of the Subcontract. By commencing performance of the Subcontract work, the selected Subcontractor certifies to Anti-Kickback Compliance.

### **III. CERTIFICATION OF AMERICANS WITH DISABILITIES ACT COMPLIANCE**

(The Subcontractor represents and certifies the following as part of its offer.)

By submission of an offer, the offeror certifies that it complies with the Americans with Disabilities Act, 42 U.S.C., 12101 et. seq., and will maintain compliance throughout the life of this Subcontract. By



commencing performance of the Subcontract work, the selected Subcontractor certifies to the Americans with Disabilities Act compliance.

**IV. CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS  
TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(The following certification applies to all offers and awards in excess of \$100,000.)

- (a) The definitions and prohibitions contained in the General Provision Article "Limitation on Payments to Influence Certain Federal Transactions" are hereby incorporated by reference in paragraph (b) of this Certification.
- (b) By submission of an offer, the offeror certifies to the best of his or her knowledge and belief that on or after December 23, 1989:
  - (1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal Subcontract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal Subcontract, grant, loan, or cooperative agreement;
  - (2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the Offeror shall complete and submit, with its offer, OMB Standard Form LLL, "Disclosure of Lobbying Activities," to the JPL Subcontracts Manager; and
  - (3) He or she will include the language of this Certification in all Lower-tier Subcontract awards at any tier and require that all recipients of Lower-tier Subcontract awards in excess of \$100,000 shall certify and disclose accordingly.
- (c) Submission of this certification and disclosure is a prerequisite for making or entering into this Subcontract imposed by Section 1352, Title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to civil penalty of not less than \$20,000 and not more than \$100,000, for each such failure.

**V. CERTIFICATION OF FULL DISCLOSURE BY THE  
SUBCONTRACTOR/OFFEROR REGARDING WHETHER IT ANTICIPATES  
BEING OR IS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY  
THE U.S. FEDERAL GOVERNMENT AT TIME OF AWARD**

(This certification applies to Subcontracts with a Subcontract value exceeding \$25,000.)

- (a) By submission of an offer, the offeror certifies that it has provided full disclosure in writing to JPL whether as of the anticipated time of award of any Subcontract resulting from the solicitation, it anticipates that it or its principals will be debarred, suspended, or proposed for debarment by the U.S. Federal Government.
- (b) By commencing performance of the Subcontract work, the selected Subcontractor certifies that it has made full disclosure to JPL in writing as to whether as of the time of award it or any of its principals is debarred, suspended, or proposed for debarment by the U. S. Federal Government. (see FAR 9.404 for information on the List of Parties Excluded from Procurement Programs).

## **VI. CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING**

(This certification is required prior to award of a Subcontract with an estimated value, including any options, over \$100,000.)

- (a) Submission of this certification is a prerequisite for making or entering into this Subcontract imposed by Executive Order 12969, August 8, 1995.
- (b) By submission of an offer, the offeror certifies that it has accepted and certifies to all the Terms and Conditions found in the Federal Acquisition Regulation (FAR) at 52.223-13.

## **VII. CERTIFICATION REGARDING SUBCONTRACTOR REPRESENTATION BY FORMER CALTECH/JPL EMPLOYEES**

(The Subcontractor represents and certifies the following as part of its offer.)

By submission of an offer, the offeror certifies that it has no previous JPL or Caltech employee involved in this procurement who has been gone from JPL for less than one year, who participated personally and substantially in the subject matter while working for JPL or Caltech, who was officially responsible for the subject matter while working for JPL or Caltech, and who owns or represents the proposer's organization.



## **ASBESTOS NOTIFICATION**

The Jet Propulsion Laboratory is committed to providing a safe and healthy work environment for all personnel.

In the past several years, the JPL management, working through the JPL Safety Operations Section - Industrial Hygiene and Workers Compensation Group (SOS - IHWC) and the Facilities Division, has had an on-going program of asbestos identification and control. This program has included bulk sampling, air monitoring, and training for members of the Facilities and Maintenance staff.

Through this program, some of the buildings at JPL have been identified to contain friable sprayed-on fireproofing above the ceilings. At the Oak Grove site, these buildings include 167, 168, 169, 179, 180, 183, 186, 230, 238, 264 and 291, and at the Foothill site, buildings 502, 506 and 507. Asbestos may be present in other JPL buildings in other various forms, including, but not limited to: transite, thermal system insulation, roofing products, ceiling tiles, spray-applied acoustical ceiling, wall materials, and floor tiles/linoleum/mastic.

The majority of asbestos at JPL is located in restricted access areas, such as mechanical rooms, boiler rooms and attics. It is in generally good condition and does not pose a hazard during normal operations.

The SOS-IHAWC staff has taken numerous air samples in JPL buildings. Sampling results indicate that airborne asbestos levels in the buildings are well below regulatory limits and are lower than those found in industrial workplaces where adverse health effects have been observed. Fiber levels in JPL buildings are not significantly different than fiber levels found outside.

Asbestos-containing materials do not pose a health hazard, unless the fibers become airborne. Subcontractor maintenance/construction/renovation activity involving intentional or accidental contact with friable materials can release fibers; therefore, only authorized and properly trained personnel are permitted to perform work that may disturb asbestos materials.

General written procedures and handling restrictions have been provided to JPL and Subcontractor personnel. SOS-IHAWC must be given notification and, if deemed necessary, a written description of any asbestos-related work to be conducted in areas where asbestos may be present prior to the initiation of activities. The work to be performed will determine if these areas must be tested and cleared. SOS-IHAWC will review sampling results and documentation after completion of Subcontractor activities prior to occupancy.

Pursuant to the California Health and Safety Code (Chapter 10.4, Section 25915), each employee has the right to review all reports about surveys, bulk sampling and air sampling. These reports are available for review during normal business hours. Contact SOS-IHAWC at extension 4-1771 to review these documents or if there are any questions.

## **Notice of Potential Tax Withholding**

JPL is legally obligated to withhold federal and/or state income tax from certain contractor and consultant payments when required by law. Withholding may be required under the following circumstances:

### **1. Nonresident Independent Contractor/Consultant State Source Income Tax**

Payments made to California nonresident contractors or consultants, including sole proprietors, corporations, limited liability companies, and partnerships, that do not have a permanent place of business in CA, or that are not registered to do business in California, are subject to a seven percent state income tax withholding for services performed in California. No withholding is required on payments for goods, or for services performed outside California. See State Tax Form 587 (Nonresident Income Allocation Worksheet) and Form 590 (Withholding Exemption Certificate).

### **2. Nonresident (and Resident) Alien Federal Income Tax**

Payments made to nonresident alien contractors/consultants are subject to a thirty percent federal income tax withholding for services performed in the U.S. unless an exception applies. A nonresident alien from a country with an income tax treaty with the United States may be exempt from tax under the Self-employment Article of the treaty if the individual satisfies the conditions of the treaty article. A nonresident alien from a non-treaty country may claim a daily personal exemption amount. Such nonresident aliens who have a U.S. taxpayer identification number (TIN) – either a U.S. Social Security Number or Individual Taxpayer Identification Number - can submit Federal Tax Form 8233 (Exemption From Withholding on Compensation for Independent Personal Services of a Nonresident Alien Individual) to claim a withholding reduction or exemption. No exemption is available for nonresident aliens who lack a TIN. Nonresident aliens not claiming such an exemption should submit Federal Form W-8BEN (Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding). For more information, refer to IRS Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities.

Resident aliens should complete Federal Form W-9 (Payer's Request for Taxpayer Identification Number and Certification) to submit a U.S. taxpayer identification number. Resident aliens with no U.S. taxpayer identification number will be subject to back-up withholding, currently at a rate of twenty-five percent.

### **3. Federal or State Tax Liens or Levies**

JPL may be required to withhold payments in an amount necessary to satisfy tax liens or levies or judgments duly issued against contractors or consultants by cognizant tax or judicial authorities.

Disclaimer: JPL is not liable for amounts incorrectly withheld. However, if JPL determines that amounts have been incorrectly withheld, and provided that such amounts have not been remitted to tax authorities, JPL shall refund such amounts to the contractor/consultant.